

# **MUNICIPAL ADMINISTRATIVE HEARINGS**

## **Development and Operational Considerations**



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*This information is provided solely as a preliminary guide.  
Each point noted in the Program Considerations Section should be  
thoroughly discussed prior to implementation.*

## CONTENTS

History.....	3
Program Considerations.....	4
Home Rule versus Non-Home Rule (synopsis of presentation from Adjudication Conference December 1, 2006).....	6
Considerations in Representation .....	8
Administrative Adjudication Statute .....	10
Personal Qualifications/Biography .....	14

## History

The State of Illinois enacted law in 1997 permitting any municipality to create a system for the adjudication of ordinance violations. These statutes allow for the creation of a judicial body within a municipal government. Statutory differences exist between home rule and non-home rule adjudication systems. However both provide the same essential function: a local forum for the hearing of civil code actions specific to that municipality. These actions involve the municipality as petitioner, and private entities (citizens, corporations, etc.) as respondents. The administrative court's authority extends and is limited to matters of the local government's municipal code.

This concept, now implemented in various municipalities, has been challenged in both state and federal court and upheld as constitutional. The basic structure of the process is provided in the Illinois Compiled Statutes in order to provide due process, the fair adjudication of local ordinance matters, and consistency among state municipalities. Each hearing shall be presided over by a hearing officer, also referred to as an administrative law judge (ALJ). The ALJ's basic scope of authority is defined by state law, with dramatic differences existing between home rule and non-rule units. The process of enforcing an administrative judgment is also different for home rule and non-rule governments.

If implemented properly, an administrative hearing system allows for the fair adjudication of matters unique to a municipality. Its effects include enhancing overall community code compliance, establishing a convenient forum for a municipality and its citizens, providing due process, and increasing the quality of life within a community.

## Program Considerations

Some necessary factors to consider when creating an administrative hearing program include:

- Organizational structure (Department versus Division)
- Budget
- Ordinance drafting (enabling law and revisions if necessary to other ordinances)
- Types of matters to be adjudicated (non-vehicular local ordinances, vehicular matters – parking, compliance, impoundment, automated traffic enforcement)
- Complaint/citation format
- Notice procedures (non-vehicular, vehicular)
- Enforcement personnel training
- ALJ orientation
- Hearing location (capacity, convenience, decorum, security)
- Staffing considerations: (Hearings personnel, ALJ, program administrator)
- Hearing process (method of prosecution)\*
- Available remedies – ordinance driven (e.g. fines, court costs, orders of compliance, compliance bonds, community service, nuisance abatement costs)
- Forms
- Record keeping /software

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\* This item is discussed in detail on page 8 of this guide.

- Enforcement of judgments (e.g. liens, denial of services, garnishment, vehicle immobilization, license suspension, civil contempt, etc.)
- Public perception

While system modifications are inevitable, “growing pains” can be minimized by thoroughly discussing each point above in the context of the goals of the municipality.

Additionally, establishing an administrative adjudication process does not preclude a municipality from seeking redress of matters in circuit court. A local government can choose its forum for enforcement. Reasons may include damages or remedies which are beyond the scope of authority available in an administrative hearing, immediacy, or imminent danger.

It is important to remember that an administrative adjudication system *does not guarantee the success of each case filed by a municipality*. As in circuit court, success depends on myriad factors including drafting an appropriate complaint in form and substance, withstanding available defenses, and prevailing by the appropriate burden of proof.

**Municipal Adjudication**  
*Home Rule versus Non-Home Rule*  
 Statutory Procedural Differences

<b>Municipality Governance:</b>	<b>Home Rule</b>	<b>Non-Home Rule</b>
<b>Jurisdiction:</b> Municipal ordinances EXCEPT:	Proceedings outside of HR authority AND 625 ILCS 6-204	Building Code Violations pursuant to 65 ILCS5/11-31.1, and 625 ILCS 6-204
<b>Hearing Officer Powers:</b>	<p>Fines ≤ \$50,000.00, (excepting tax cases)</p> <p>Compliance/abatement costs</p> <p>Ability to set aside default judgments</p> <p>Judgment enforcement costs: attorneys fees, court costs, property demo/foreclosure costs <i>(See order weight below)</i></p> <p>Other remedies available if provided by ordinance (non-criminal)</p>	<p>Fines ≤ \$750.00; Sanction(s) as provided by code</p>
<b>Charging Document Requirements:</b>	<p>Statement of legal authority &amp; jurisdiction</p> <p>Penalties for failure to appear. (default provisions)</p>	<p>Multiple copy violation notice and report form</p> <p>Stamped docket number by code hearing dept.</p> <p>Hearing date</p>

<b>Hearing Date:</b>	"Non-Emergency" situations: $\geq$ 15 Days after service. (Mail: $\geq$ 15 days after deposited in mail)	Not less than 30 nor more than 40 days after reporting violation ( <i>no reference to service date</i> )
<b>Service:</b>	Personal, "Mail," Posting on property	First class mail
<b>Continuances:</b>	<i>No reference</i>	$\leq$ 25 Days; Only when "absolutely necessary to protect" rights of respondent  Lack of preparation insufficient grounds.
<b>Evidence:</b>	Formal rules not applicable  Hearsay acceptable within limits.	"Strict rules" of evidence not applicable  No hearsay limitations stated. All relevant evidence to existence/non-existence of violation "shall" be accepted.
<b>Municipal Presentation:</b> ( <i>as opposed to representation</i> )	<i>No reference</i>	Designated attorney, or municipal employee <i>other than</i> code department employee
<b>Default Judgment Provisions</b>	Right to file motion to set aside judgment w/in 21 days after order issued.	No provisions other than hearing officer ability to proceed by default if respondent fails to appear (Must be appealed to circuit court for redress)
<b>Order Weight &amp; Enforceability</b> ( <i>following expiration of 35 day appellate window</i> )	Same weight as "judgment entered by a court of competent jurisdiction"  Recordable  Collectable debt  Property lien, etc.	Municipality must commence action in circuit court in order to obtain judgment on the findings, decision and order  Service upon respondent required  Hearing order imposing sanctions, fines and costs may not exceed \$2,500.00

**LEGAL ISSUES THAT ARISE IN ADJUDICATION**  
***Considerations in Representation: Petitioner versus the Respondent***

- A. The Petitioner: Presenting the case for the municipality (operational and legal factors)
1. Attorney: ability to bring out strengths/correct defects/cross/object.  
  
*Factors with:*
    - a. Corporation counsel (in-house)
    - b.. Retained counsel
  2. Inspector/Officer – municipal employee witness  
  
*Factors:*
    - a. On scene, “star witness”
    - b. BUT inability to “practice law” (argue, object, etc. – see handout)
  3. Attorney *and* inspector/officer – **BEST COMBINATION**
  4. Document alone – “4 corners”  
  
*Requirements: Free of fatal defects (nobody present to amend/correct)*
    - a. Proper form:
      - 1) Establish service
      - 2) Prima facie case (Who, What ordinance violated/ When, Where, How)

**CONSIDERATIONS**

- Complexity of issue (e.g. Parking ticket versus Zoning/building codes, etc.)
- Importance of the particular case. (Repeat offender? Life safety issues?)
- Costs



B. The Respondent: Presentation of a Defense (From the ALJ perspective)

1. Attorney (with/ w/out respondent)
2. Pro se
  - a. Convey respect (Starts with the name)
  - b. Importance of opening remarks – *PLAIN LANGUAGE!*
    - 1) Expectations (of decorum)
    - 2) Informational/educational
    - 3) Standard of proof (what it means)
    - 4) Dispels “kangaroo court” image
    - 4) Helps prevents future interruptions
    - 5) Record for appeal – *Lets App. Ct. know respondent informed of rights*
    - 6) ALJ Reminder (Mental flow chart)

**\*NOTE: HAVE PROCEDURAL RULES & REGS ON FILE.**

C. The Decision

1. Make & explain findings of fact then rule based on those findings.
  - a. Protects decision from remand/reversal on appeal.
  - b. Dispels rubber stamp image
  - c. Allows respondent feeling of having *had their day in court.*

**MUNICIPALITIES**  
**(65 ILCS 5/) Illinois Municipal Code.**

(65 ILCS 5/Art. 1 Div. 2.1 heading)

**DIVISION 2.1. ADMINISTRATIVE ADJUDICATIONS**

(65 ILCS 5/1-2.1-1)

**Sec. 1-2.1-1. Applicability.** This Division 2.1 applies only to municipalities that are home rule units.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-2)

**Sec. 1-2.1-2. Administrative adjudication of municipal code violations.** Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, except for (i) proceedings not within the statutory or the home rule authority of municipalities; 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.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-3)

**Sec. 1-2.1-3. Administrative adjudication procedures not exclusive.** The adoption by a municipality of a system of administrative adjudication does not preclude the municipality from using other methods to enforce municipal ordinances.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-4)

**Sec. 1-2.1-4. Code hearing units; powers of hearing officers.**

(a) An ordinance establishing a system of administrative adjudication, pursuant to this Division, shall provide for a code hearing unit within an existing agency or as a separate agency in the municipal government. The ordinance shall establish the jurisdiction of a code hearing unit that is consistent with this Division. The "jurisdiction" of a code hearing unit refers to the particular code violations that it may adjudicate.

(b) Adjudicatory hearings shall be presided over by hearing officers. 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) 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

(5) imposing penalties consistent with applicable code provisions 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, or at the option of the municipality, 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 municipality is located. The maximum monetary fine under this item (5), shall be exclusive of costs of enforcement or costs imposed to secure compliance with the municipality's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the municipality.

(c) Prior to conducting administrative adjudication proceedings, administrative hearing officers shall have successfully completed a formal training program 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.

In addition, every administrative hearing officer must be an attorney licensed to practice law in the State of Illinois for at least 3 years.

(d) A proceeding before a code hearing unit shall be instituted upon the filing of a written pleading by an authorized official of the municipality.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-5)

**Sec. 1-2.1-5. Administrative hearing proceedings.**

(a) Any ordinance establishing a system of administrative adjudication, pursuant to this Division, shall afford parties due process of law, including notice and opportunity for hearing. Parties shall be served with process in a manner reasonably calculated to give them actual notice, including, as appropriate, personal service of process upon a party or its employees or agents; service by mail at a party's address; or notice that is posted upon the property where the violation is found when the party is the owner or manager of the property. In municipalities with a population under 3,000,000, if the notice requires the respondent to answer within a certain amount of time, the municipality must reply to the answer within the same amount of time afforded to the respondent.

(b) Parties shall be given notice of an adjudicatory hearing which includes the type and nature of the code violation to be adjudicated, the date and location of the adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing.

(c) Parties shall be provided with an opportunity for a hearing during which they may be represented by counsel, present witnesses, and cross-examine opposing witnesses. Parties may request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant

witnesses and the production of relevant documents. Hearings shall be scheduled with reasonable promptness, provided that for hearings scheduled in all non-emergency situations, if requested by the defendant, the defendant shall have at least 15 days after service of process to prepare for a hearing. For purposes of this subsection (c), "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety, or welfare. If service is provided by mail, the 15-day period shall begin to run on the day that the notice is deposited in the mail. (Source: P.A. 94-616, eff. 1-1-06.)

(65 ILCS 5/1-2.1-6)

**Sec. 1-2.1-6. Rules of evidence shall not govern.** The formal and technical rules of evidence do not apply in an adjudicatory hearing permitted under this Division. 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.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-7)

**Sec. 1-2.1-7. Judicial review.** Any final decision by a code hearing unit 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.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-8)

**Sec. 1-2.1-8. Enforcement of judgment.**

(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 Illinois Administrative Review Law are a debt due and owing the municipality and may 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 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.

(c) 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 municipality 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 municipality and may be collected in accordance with applicable law. Prior to any expenses being fixed by a hearing officer pursuant to this subsection (c), the municipality shall provide notice to the defendant that states that the defendant shall appear at a hearing before the administrative 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 not be 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.

(d) 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 municipality under this Section. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

(e) A hearing officer may set aside any judgment entered by default and set a new hearing date, upon a petition filed within 21 days after the issuance of the order of default, if the hearing officer determines that the petitioner's failure to appear at the hearing was for good cause or at any time if the petitioner establishes that the municipality did not provide proper service of process. If any judgment is set aside pursuant to this subsection (e), the hearing officer shall have authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the municipality as a result of the vacated default judgment.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-9)

**Sec. 1-2.1-9. Impact on existing administrative adjudication systems.** This Division shall not affect the validity of systems of administrative adjudication that were authorized by State law, including home rule authority, and in existence prior to the effective date of this amendatory Act of 1997.

(Source: P.A. 90-516, eff. 1-1-98.)

(65 ILCS 5/1-2.1-10)

**Sec. 1-2.1-10. Impact on home rule authority.** This Division shall not preempt municipalities from adopting other systems of administrative adjudication pursuant to their home rule powers.

(Source: P.A. 90-516, eff. 1-1-98.)



## Personal Qualifications/Biography

David Eterno began hearing and negotiating code compliance issues in 1996. The initial passage of law in 1997 enabling municipalities to formally enact a system of administrative adjudication led to his service as one of the first administrative hearing officers for the premier system established by the City of Chicago. Cases are now prosecuted five days a week in sixteen different court rooms located at a central hearing facility in addition to various branch locations

Mr. Eterno now serves as an administrative law judge in four municipalities presiding over cases involving quasi-criminal actions; building, fire and zoning codes; health and sanitation issues; parking and vehicular compliance citations; and other matters.

Mr. Eterno also serves as a consulting attorney and advises municipalities on matters involving municipal adjudication. In addition to experience gained on the bench and through private litigation practice, he has received extensive training and attended numerous seminars conducted by the National Judicial College, various federal administrative law judges and circuit court judges. He is a member of both the Illinois Association of Administrative Law Judges and the National Association of Administrative Law Judges.