

ORDINANCE NO. 16797

AN ORDINANCE AUTHORIZING THE ADMINISTRATIVE ADJUDICATION OF MUNICIPAL CODE VIOLATIONS

WHEREAS, the Mayor and City Council have determined that establishing an administrative system for the adjudication of municipal code violations as a supplemental process to traditional ordinance violation prosecution would, in appropriate cases, better allocate City and State resources; and

WHEREAS, Division 2.1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1 et seq., as amended) authorizes home rule municipalities to provide for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution; and

WHEREAS, Article VII, Section 6(a) of the Illinois Constitution authorizes home rule municipalities to exercise any power or function pertaining to their local government and affairs.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF JOLIET, ILLINOIS, AS FOLLOWS:

SECTION 1: Chapter 2 of the Code of Ordinances of the City of Joliet is hereby amended with the addition of Article 16 as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 2: This ordinance is adopted pursuant to the home rule powers vested in the City of Joliet by the Illinois Constitution and by Division 2.1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1 et seq., as amended).

SECTION 3: This ordinance shall provide a supplemental method of enforcing all City ordinances, other than an offense under the Illinois Vehicle Code (625 ILCS 5/1-100 et seq.), any reportable offense under Section 6-204 of the Illinois Vehicle Code (or similar offense that is a traffic regulation governing the movement of vehicles) or proceedings not within the statutory or constitutional authority of the City. This ordinance shall not be construed to affect, impair or invalidate any pending proceeding. The establishment of an administrative system of adjudication does not preclude the use of other methods to enforce City ordinances.

SECTION 4: Any ordinance in conflict with this ordinance is repealed to the extent of such conflict. Any statute in conflict with this ordinance is preempted, unless such preemption has been limited in accordance with the Illinois Constitution.

SECTION 5: This ordinance shall be deemed severable and the invalidity of any portion hereof shall not be deemed to invalidate the remainder.

PASSED this 14th day of March, 2011.



MAYOR



CITY CLERK

VOTING YES: MAYOR PRO-TEM QUILLMAN and COUNCILWOMAN BARBER,
COUNCILMEN BROPHY, DORRIS, GERL, GIARRANTE, SHETINA
and TURK.

VOTING NO: NONE.

NOT VOTING: MAYOR SCHULTZ (Absent)

EXHIBIT "A"

Article 16

Sec. 16-1. Short Title.

This Article shall be known and may be cited as the Joliet Administrative Adjudication Code.

Sec. 16-2. Definitions.

The following terms shall have the meaning set forth therein.

Administrative Hearing Officer shall mean the person designated by the City Manager to serve as the hearing officer for administrative enforcement proceedings commenced pursuant to this Division. The Administrative Hearing Officer, and other persons designated by the City Manager to assist the Administrative Hearing Officer in the performance of official duties pursuant to this Division, shall constitute the Code Hearing Unit as set forth in Division 2.1 of the Illinois Municipal Code.

Code Violation shall mean the violation of any of the following:

(a) Incorporated Codes

- (1) The International Building Code (2003 edition), as set forth in Section 8-175(a) of this Code
- (2) The International Residential Code (2003 edition), as set forth in Section 8-175(b) of this Code
- (3) The National Electric Code (2002 edition), as set forth in Section 8-211 of this Code
- (4) The International Fire Prevention Code (2003 edition), as set forth in Section 8-279 of this Code
- (5) Section 704 of the National Fire Protection Association Code (1990 edition)
- (6) The International Mechanical Code (2003 edition), as set forth in section 8-300 of this Code
- (7) The Illinois Plumbing Code (1998 edition), as set forth in section 8-325 of this Code
- (8) The International Property Maintenance Code (2003 edition), as set forth in Section 8-335 and 8-336 of this Code

(b) State Laws

- (1) Smoke Detector Act, 425 ILCS 60/1 et seq.
- (2) Carbon Monoxide Alarm Detector Act, 430 ILCS 135/5 et seq.

(c) General City Ordinances

- (1) Code of Ordinances
- (2) Zoning Ordinance (Ordinance No. 5285, as amended)
- (3) Subdivision Regulations (Ordinance No. 7208, as amended)
- (4) Joliet Accessibility Code (Section 8-709 et seq., as amended)
- (5) Historic Preservation Code (Section 8-601 et seq., as amended).

Sec. 16-3. Administrative Hearing Officer.

The office of Administrative Hearing Officer is hereby established. The City Manager shall have the authority to designate one or more persons to serve as Administrative Hearing Officer. The City Manager may designate other persons to provide assistance to the Administrative Hearing Officer in the performance of the functions set forth in this Division. A person designated as an Administrative Hearing Officer shall be an attorney licensed to practice law in the State of Illinois for at least three years. Prior to conducting administrative adjudication proceedings, the Administrative Hearing Officer shall have successfully completed a formal training program in accordance with Section 1-2.1-4 of the Illinois Municipal Code which, at a minimum, shall include the following:

- (a) instruction on Illinois law pertaining to the procedural requirements for administrative hearings conducted pursuant to this Division
- (b) instruction on the substantive requirements and prohibitions of the provisions of the ordinances within the jurisdiction of the Administrative Hearing Officer.

Sec. 16-4. Powers of Administrative Hearing Officer.

The Administrative Hearing Officer shall have the power necessary to conduct fair and impartial hearings including, but not limited to, the power to:

- (a) hold conferences for the settlement or simplification of the issues
 - (b) administer oaths and affirmations
 - (c) hear testimony
 - (d) rule upon motions, objections, and the admissibility of evidence
- (d) subject to the restrictions contained in Section 16-9, at the request of any party or on the Administrative Hearing Officer's own motion, subpoena the attendance of relevant witnesses and the production of relevant documents, records and other tangible things

(e) preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing

(f) regulate the course of the hearing in accordance with this Division and the rules promulgated hereunder, or other applicable law

(g) issue a final order which includes findings of fact and conclusions of law

(h) dismiss, with or without costs, as determined in the reasonable discretion of the Administrative Hearing Officer, proceedings in which the Respondent has established abatement and compliance prior to the first appearance on the Notice of Violation

(i) impose penalties and fines and issue orders that are consistent with applicable code provisions and assess costs upon finding a party liable for the charged violation; provided, however, that in no event shall the Administrative Hearing Officer have the authority to: (i) impose a penalty of imprisonment; or (ii) impose a fine in excess of \$750.00 per violation, exclusive of costs of enforcement or costs imposed to secure compliance with this Code

(j) promulgate rules and regulations for the conduct of administrative adjudication proceedings brought pursuant to this Division in accordance with Section 16-19.

Sec. 16-5. Instituting Administrative Adjudication Proceedings.

An administrative adjudication proceeding under this Division shall be commenced by the filing of an executed Notice of Violation with the Administrative Hearing Officer by an authorized officer or employee of the City. The Administrative Hearing Officer shall have subject matter jurisdiction upon the filing of a Notice of Violation.

Sec. 16-6. Notice of Violation.

(a) Before an administrative adjudication hearing may be conducted pursuant to this Division, a Notice of Violation shall be prepared and provided to the alleged violator (the "Respondent") in accordance with this section.

(b) Unless otherwise provided by law or rule, the issuer of a Notice of Violation shall specify on the Notice:

- (1) the name, title and department of the Notice issuer
- (2) the name and address of the Respondent, if known
- (3) the date, time and place of the alleged violation

- (4) citation of the ordinance alleged to have been violated and a brief description of the alleged violation
- (5) the date, time and location of the hearing
- (6) the penalties for failure to appear at the hearing

The issuing officer shall sign the notice to certify that the information contained in the Notice is true and correct.

(c) Unless otherwise provided by law or rule, a Notice of Violation shall be served upon the Respondent no less than seven calendar days prior to the date of the hearing in any of the following ways:

- (1) by first class or express mail or by overnight carrier at the Respondent's residence address or, if the Respondent is a business entity, at any address identified for its registered agent or at its principal place of business
- (2) by personal service, including personal service upon an employee or agent of the Respondent at a place of business of the Respondent
- (3) if service cannot be made by either of (1) or (2) above, when the Respondent is the owner or manager of property which is the subject of a Notice of Violation, by posting a copy thereof on the front entrance of the building or other structure where the violation is found, or if the property is unimproved or fenced off, by posting a copy of the Notice of Violation in a prominent place upon the property where the violation is found
- (4) in any manner that has been previously consented to by the Respondent, including, but not limited to, email
- (5) any other manner if such service is reasonably calculated to give the Respondent actual notice.

(d) In all non-emergency situations, if requested, the Respondent shall have at least 15 days after the date of mailing or other service of a Notice of Violation to prepare for a hearing. For purposes of this section, "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety or welfare.

Sec. 16-7. Administrative Hearings.

(a) All administrative adjudication proceedings conducted pursuant to this Division shall afford the parties an opportunity for a hearing before the Administrative Hearing Officer. All proceedings shall be conducted in public unless otherwise required by law.

(b) An attorney who appears on behalf of any person shall file with the Administrative Hearing Officer a written appearance on a form provided for such purpose.

(c) In no event shall the case for the city be presented by the Administrative Hearing Officer; provided, however, that documentary evidence, including the Notice of Violation may be presented at the hearing by the Administrative Hearing Officer.

(d) The Administrative Hearing Officer may grant continuances upon a finding of good cause.

(e) All testimony shall be given under oath or affirmation.

(f) The Administrative Hearing Officer may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents, records and other tangible things. Issuance of subpoenas shall be subject to the restrictions contained in Section 16-9.

(g) Subject to subsection (j) of this section, the administrative law officer may permit witnesses to submit their testimony by affidavit or by telephone.

(h) 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.

(i) 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 and signed in accordance with Section 16-6 shall be prima facie evidence of the facts specified therein.

(j) Upon the timely request of any party to the proceeding, any person, who the Administrative Hearing Officer determines may reasonably be expected to provide testimony which is relevant and material and which does not constitute a presentation of cumulative evidence, shall be made available for cross-examination prior to a final determination of liability.

(k) The record of all hearings before the Administrative Hearing Officer shall include: (i) a record of the testimony presented at the hearing, which may be made by tape recording or other appropriate means; (ii) all documents presented at the hearing; (iii) a copy of the Notice of Violation; and (iv) a copy of the findings and decision of the Administrative Hearing Officer.

(l) Upon conclusion of a hearing, the Administrative Hearing Officer shall issue a final determination of liability or no liability. Upon issuing a final determination of liability the Administrative Hearing Officer may take one or more of the following actions:

- (1) impose penalties or fines that are consistent with applicable provisions of the Code of Ordinances
- (2) issue orders that are consistent with applicable provisions of the Code of Ordinances
- (3) assess costs reasonably related to conducting the administrative adjudication proceeding

If the Administrative Hearing Officer issues a final determination of liability as to a violation of a code but finds that the Respondent has already begun to correct the violation proved, the Administrative Hearing Officer may, in his or her discretion, schedule a separate hearing on the imposition of fines or other sanctions for a date no later than 30 days from the date of issuance of the final determination of liability, unless the Administrative Hearing Officer finds that good cause has been shown that a longer period is necessary. The Administrative Hearing Officer may order a reinspection of the property to verify code compliance and the extent of any corrective measures prior to hearing on the fines or other sanctions.

(m) In the issuance of a final determination of liability, the Administrative Hearing Officer shall inform the Respondent of his or her right to seek judicial review of the final determination.

Sec. 16-8. Default.

(a) If at the time set for a hearing the recipient of a Notice of Violation, or his or her attorney of record, fails to appear, the Administrative Hearing Officer may find the recipient in default and proceed with the hearing and accept evidence relevant to the existence of a code violation and conclude with a finding, decision, and order. A copy of the order of default shall be served in any manner permitted by Section 16- 6.

(b) The recipient of a Notice of Violation who is found to be in default may petition the Administrative Hearing Officer to set aside the order of default and set a new hearing date in accordance with Section 16-17.

Sec. 16-9. Subpoenas.

(a) The Administrative Hearing Officer may issue a subpoena only if he or she determines that the testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is:

- (1) relevant to the case; and
- (2) relates to a contested issue in the case.

(b) A subpoena issued under this Division shall identify:

- (1) the person to whom it is directed;
- (2) the documents, records or other items sought by the subpoena, if any;
- (3) the date for the appearance of the witnesses and the production of the documents, records or other items described in the subpoena;
- (4) the time for the appearance of the witnesses and the production of the documents, records or other items described in the subpoena; and
- (5) the place for the appearance of the witnesses and the production of the documents, records or other items described in the subpoena.

(c) In no event shall the date identified for the appearance of the witnesses or the production of the documents, records or other items be less than seven days after service of the subpoena.

(d) Within three business days of being served with a subpoena issued in accordance with this Division, the recipient of the subpoena may file a motion to quash the subpoena with the Administrative Hearing Officer.

Sec. 16-10. Compliance Bond.

In order to ensure that ordinance violations are remedied or fines are paid in a timely manner, the Administrative Hearing Officer, upon issuing a final determination of liability, may require a Respondent to post with the city a compliance bond. Whenever it is necessary for the city to make repairs or otherwise expend funds relating to a code violation for which a bond was posted, or whenever fines or costs remain unpaid after a Respondent has exhausted or failed to exhaust judicial review procedures, the Administrative Hearing Officer may, after giving the parties notice and opportunity to be

heard, issue an order permitting the city to draw against the bond in an appropriate amount. The Administrative Hearing Officer shall order the bond, less the costs incurred by the city, returned to the Respondent upon proof of compliance with the applicable code provisions and the payment of applicable fines or costs.

Sec. 16-11. Violations of Administrative Hearing Officer Orders.

A person violates this section if he or she:

- (a) receives notice and an opportunity to be heard under this Division; and
- (b) knowingly fails to comply with an order issued by the Administrative Hearing Officer, including any requirement of a subpoena.

Each day that the violation occurs shall be considered a separate and distinct offense.

It shall be an affirmative defense to this section that a court of competent jurisdiction stayed the order issued by the Administrative Hearing Officer prior to the effective date of the order. It is not a defense to this section that a person:

- (c) came into compliance or attempted to come into compliance with the order after the date the order by its terms required compliance; or
- (d) sought judicial review of the order but failed to obtain a stay of the order prior to the date the order by its terms required compliance.

A person determined to be liable under this section may be fined in an amount not to exceed \$750.00 per day of violation.

Sec. 16-12. Review under the Administrative Review Law.

Any final decision by the Administrative Hearing Officer 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 (735 ILCS 5/3-101 et seq., as amended).

Sec. 16-13. Enforcement of Administrative Hearing Officer Orders.

- (a) Any fine, other sanction or costs imposed by an Administrative Hearing Officer's order that remains unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures shall be a debt due and owing the city and, as such, may be collected in accordance with applicable law.
- (b) After the expiration of the period in which judicial review may be sought, unless stayed by a court of competent jurisdiction, the findings, decision and order of an

Administrative 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 Respondent fails to comply with an Administrative Hearing Officer's order to correct a code violation or imposing a fine or other sanction as a result of a code violation, any expenses incurred by the city to enforce the Administrative Hearing Officer's order, 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 the Administrative Hearing Officer, shall be a debt due and owing the city. Prior to any expenses being fixed by the Administrative Hearing Officer, the Respondent shall be provided with notice that states that the Respondent shall appear at a hearing before the Administrative Hearing Officer to determine whether the Respondent has failed to comply with the Administrative Hearing Officer's order. The notice shall set the time for the hearing, which shall not be less than seven days from the date that notice is served. Notice shall be served in accordance with Section 16-6 and the seven-day period shall begin to run on the date that the notice was issued.

(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 Respondent in the amount of the debt due and owing the city. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

(e) Nothing in this section shall prevent the city from enforcing or seeking to enforce any order of the Administrative Hearing Officer in any manner which is in accordance with applicable law.

Sec. 16-16. Interest.

Except as otherwise provided by law, interest on any debt due and owing shall accrue at the rate set for interest upon judgments.

Sec. 16-17. Petition To Set Aside Default Order.

(a) The Administrative Hearing Officer may set aside any order 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 Administrative 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 petitioner was not provided with proper service of process. If the petition is granted, the Administrative Hearing Officer shall proceed with a new hearing on the underlying matter as soon as practical.

(b) If any order is set aside under this section, the Administrative Hearing Officer shall have authority to enter an order extinguishing any lien which has been

recorded for any debt due and owing as a result of the vacated default order and directing the city to refund any fines and/or penalties paid pursuant to the vacated order.

Sec. 16-18. Petition By City Department For Relief From A Final Order Of Liability Entered In Error.

(a) After an order of liability becomes final, the city department or agency which initiated or prosecuted an administrative adjudication before the Administrative Hearing Officer may file a written petition for relief from a final order of liability entered in error with the Administrative Hearing Officer.

(b) The written petition must be filed and signed by the department or agency head of the initiating or prosecuting department or agency and must set forth facts alleging that the order of liability:

- (1) was entered in error
- (2) is unsupported by the record
- (3) is inconsistent with applicable provisions of this Code; and
- (4) should be vacated to avoid a miscarriage of justice.

(c) Upon the filing of a written petition, the Administrative Hearing Officer shall schedule a hearing on the petition. The scope of the hearing shall be limited to the merits of the petition and shall not be expanded to constitute a rehearing of the underlying Notice of Violation.

(d) If a petition is granted, the final order of liability shall be vacated. If an order is vacated under this section, the Administrative Hearing Officer shall have authority to enter an order extinguishing any lien which has been recorded for any debt due and owing as a result of the vacated order and ordering a refund of any fines and/or penalties paid pursuant to the vacated order.

Sec. 16-19. Rules and Regulations.

The Administrative Hearing Officer shall have the authority to promulgate rules and regulations pertaining to the conduct of hearings and other matters within its jurisdiction. In order to issue a rule or regulation, the Administrative Hearing Officer shall first publish the proposed rule or regulation on the City of Joliet's official website along with a notice of hearing to receive public comment. Proposed rules and regulations, and the notice of hearing, shall be published on the official website of the City for at least 30 days prior to the public hearing. All rules and regulations enacted by the Administrative Hearing Officer shall be kept on file in the office of the City Clerk where they shall be available to the public for inspection and copying during normal business hours.