

**09-O-03
ORDINANCE**

Sponsored by

THE HONORABLE TODD H. STROGER

PRESIDENT OF THE COOK COUNTY BOARD OF COMMISSIONERS

ESTABLISHMENT OF THE DEPARTMENT OF ADMINISTRATIVE HEARINGS

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 2 Administration, Article IX Administrative Hearings, Sections 2-901 through 2-929 of the Cook County Code are hereby enacted as follows:

ARTICLE IX. ADMINISTRATIVE HEARINGS

Sec. 2-901. Department of administrative hearings – establishment and composition.

(a) There is hereby established an office of the County government to be known as the department of administrative hearings which shall provide an independent central panel of adjudicators authorized to conduct administrative adjudication proceedings for departments, agencies, boards and commissions of the County.

(b) The department shall be administered by a director, who is licensed to practice law in the State of Illinois, and who shall be appointed by the President of the County Board, subject to approval by the County Board of Commissioners, and staffed by administrative law officers and other employees as may be provided for in the annual appropriation ordinance.

(c) The creation and administration of administrative law officer pools and the process for the assignment of cases to administrative law officers shall be clearly stated in the Department of Administrative Hearing's rules and procedures.

Sec. 2-902. Definitions.

Administrative law officer or *administrative law judge* may be used interchangeably.

Central panel means a tribunal of professional adjudicators, administratively independent, who review and issue judgment upon County ordinance violations issued by County departments, agencies, boards and commissions.

Code or *County Code* shall include the "Code of Ordinances, Cook County Illinois".

Sec. 2-903. Powers and duties of the director.

The powers and duties of the director of the department of administrative hearings shall include:

(a) Directing the department with respect to its management and structure, including the creation or reorganization of hearing divisions within the department;

(b) Appointing and removing administrative law officers, as necessary;

(c) Promulgating rules and regulations for the conduct of administrative adjudication proceedings;

(d) Monitoring and supervising the work of administrative law officers and, upon receipt of a timely petition for review authorized by the code, reviewing, modifying or reversing their decisions;

(e) Establishing any other necessary rules and regulations as may be required to carry out the provisions of this chapter.

Sec. 2-904. Administrative law officers – powers and duties.

(a) Each administrative law officer appointed by the director shall be an attorney admitted to the practice of law in the State of Illinois who has not less than five years experience. Administrative law officers shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power to:

- (1) Hold conferences for the settlement or simplification of the issues;
- (2) Administer oaths and affirmations;
- (3) Hear testimony;
- (4) Rule upon motions, objections, and the admissibility of evidence;
- (5) Subject to the restrictions contained in Section [2-913](#) (relating to subpoenas), at the request of any party or on the administrative law officer's own motion, subpoena the attendance of relevant witnesses and the production of relevant books, records, or other information;
- (6) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
- (7) Regulate the course of the hearing in accordance with this article, the rules adopted by the department for the conduct of administrative hearings, or other applicable law;
- (8) Discuss administrative adjudication proceedings with their supervisors;
- (9) Issue a final order which includes findings of fact and conclusions of law;
- (10) 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 an administrative law officer have the authority to: (i) impose a penalty of imprisonment; or (ii) except in cases to enforce the collection of any tax imposed and collected by the County, in which this limitation shall not apply, impose a fine in excess of that authorized by the Code, exclusive of cost of enforcement; and
- (11) In any case in which a party has sought review by the department of administrative hearings of an order or determination of another County department, agency, board or commission, when such review is authorized by this Code, assess costs upon affirming the order or determination.

Sec. 2-905. Administrative law officers – training requirements.

(a) Prior to conducting any administrative adjudication proceeding, an administrative law officer shall have successfully completed a formal training program, approved by the director, which includes the following:

- (1) Instruction on the rules of procedure of the administrative hearings which he or she will conduct;
- (2) Orientation to each subject area of the code violations which he or she will adjudicate;
- (3) Observation of administrative hearings; and
- (4) Participation in hypothetical cases, including ruling on evidence and issuing final orders.

Sec. 2-906. Rules and regulations – available for public inspection.

The rules and regulations promulgated for the conduct of administrative adjudication proceedings shall be published and kept on file in the office of the director where they shall be available to the public for inspection and copying during normal business hours.

Sec. 2-907. General provisions.

The provisions of this article shall apply to administrative adjudication proceedings conducted by the department of administrative hearings 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.

Sec. 2-908. Instituting administrative adjudication proceedings.

Any authorized department, agency, board or commission of the County may institute an administrative adjudication proceeding with the department of administrative hearings by forwarding a copy of a notice of violation or a notice of hearing, which has been properly served, to the department of administrative hearings.

Sec. 2-909. Adjudication by mail.

The rules adopted by the director for the conduct of administrative adjudication proceedings may provide that a respondent may elect to contest an alleged violation through an adjudication by mail rather than at an administrative hearing.

Sec. 2-910. Notice.

(a) Before any administrative adjudication proceeding may be conducted, the parties shall be afforded notice in compliance with this section.

(b) Unless otherwise provided by law or rule, the issuer of a notice of violation or notice of hearing shall specify on the notice his or her name and department; where known, the name and address of the person or entity charged with the violation; the date, time and place of the violation; and the section of the code or departmental rule or regulation which was allegedly violated; and shall certify the correctness of the specified information by signing his or her name to the notice. A notice of hearing shall also include the date, time and location of the hearing and the penalties for failure to appear at the hearing.

(c) Unless otherwise provided by law or rule, a notice of violation or notice of hearing shall be served upon the alleged violator no less than seven calendar days prior to the date of the hearing: (i) by first class or express mail or by overnight carrier at the violator's residence address or, if the violator is a business entity, at any address identified for its registered agent or at its principal place of business; or (ii) by personal service, including personal service upon an employee or agent of the alleged violator at a place of business of the alleged violator or otherwise if such service is reasonably calculated to give the alleged violator actual notice; or (iii) if service cannot be made by either of (i) or (ii) above, when the alleged violator is the owner or manager of the property by posting a copy of the violation notice 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 violation notice in a prominent place upon the property where the violation is found, not less than 20 days before the hearing is scheduled.

(d) In all non-emergency situations, if requested by the defendant, the defendant shall have at least 15 days after the date of mailing or other service of a notice of violation or notice of hearing 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. 2-911. Administrative hearings.

(a) Any administrative adjudication proceeding conducted by the department of administrative hearings shall afford the parties an opportunity for a hearing before an administrative law officer.

(b) An attorney who appears on behalf of any person shall file with the administrative law officer a written appearance on a form provided by the department of administrative hearings for such purpose.

(c) In no event shall the case for the County be presented by an employee of the department of administrative hearings; provided, however, that documentary evidence, including the notice of violation, which has been prepared by another department, agency, board or commission of the County, may be presented at the hearing by the administrative law officer.

(d) The administrative law officer may grant continuances only upon a finding of good cause.

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

(f) The administrative law officer may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents. Issuance of subpoenas shall be subject to the restrictions contained in Section [2-913](#) (relating to subpoenas).

(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 violation notice, or a copy thereof, issued and signed in accordance with Section 2-910 (relating to notice) shall be prima facie evidence of the correctness of the facts specified therein.

(j) Upon the timely request of any party to the proceeding, any person, who the administrative law officer determines may reasonably be expected to provide testimony which is material and which does not constitute a needless 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 an administrative law 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 or notice of hearing; and (iv) a copy of the findings and decision of the administrative law officer.

(l) Upon conclusion of a hearing, the administrative law officer shall issue a final determination of liability or no liability. Upon issuing a final determination of liability the administrative law officer may: (i) impose penalties and/or fines that are consistent with applicable provisions of the County Code or a department's official fine schedule; (ii) issue orders that are consistent with applicable provisions of the County Code; and/or (iii) assess costs reasonably related to instituting the administrative adjudication proceeding; provided, however, that in no event shall the administrative law officer have the authority to impose a penalty of imprisonment or, except in cases to enforce the collection of any tax imposed and collected by the County, where this limitation shall not apply, impose a fine in excess of that authorized by the Code, exclusive of costs of enforcement.

(m) In the issuance of a final determination of liability, an administrative law officer shall inform the respondent of his or her right to seek judicial review of the final determination.

Sec. 2-912. Default.

(a) If at the time set for a hearing the recipient of a notice of violation or a notice of hearing, or his or her attorney of record, fails to appear, the administrative law 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 [2-910\(c\)](#) (relating to notice).

(b) The recipient of a notice of violation or a notice of hearing who is found to be in default may petition the administrative law officer to set aside the order of default and set a new hearing date in accordance with Section [2-921](#) (relating to petition to set aside default order).

Sec. 2-913. Subpoenas.

(a) An administrative law 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 chapter shall identify:
 - (1) The person to whom it is directed;
 - (2) The documents or other items sought by the subpoena, if any;
 - (3) The date for the appearance of the witnesses and the production of the documents or other items described in the subpoena;
 - (4) The time for the appearance of the witnesses and the production of the documents or other items described in the subpoena; and
 - (5) The place for the appearance of the witnesses and the production of the documents 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 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 article, the recipient of the subpoena may appeal the order authorizing the issuance of the subpoena to an administrative law officer, who shall not be the same administrative law officer who ordered the issuance of the subpoena.

Sec. 2-914. Compliance bond.

In order to ensure that code violations are remedied or fines are paid in a timely manner, an administrative law officer, upon issuing a final determination of liability, may require a code violator to post with the County a compliance bond or, as appropriate, to consent to the granting and recording of a lien against titled property. Bonds and liens shall be approved by the County comptroller and legal counsel as to form and amount. Whenever it is necessary for the County 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 code violator has exhausted or failed to exhaust judicial review procedures, the administrative law officer may, after giving the parties notice and opportunity to be heard, issue an order permitting the County to draw against the bond in an appropriate amount, or to foreclose on the lien. The administrative law officer shall order the bond or the titled property or proceeds from the titled property, less the costs incurred by the County, returned to the code violator upon proof of compliance with the applicable code provisions and the payment of applicable fines or costs.

Sec. 2-915. Violations of orders.

- (a) *Elements of the offense.* A person violates this section if he or she:
 - (1) Receives notice and an opportunity to be heard under the Code; and
 - (2) Knowingly fails to comply with an order issued by an administrative law officer under this article, including any requirement of a subpoena.

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

(b) *Defenses.* It shall be an affirmative defense to this section that a court of competent jurisdiction stayed the order issued by the administrative law officer prior to the effective date of the order.

(c) *Prohibited defenses.* It is not a defense to this section that a person:

- (1) Came into compliance or attempted to come into compliance with the order after the date the order by its terms required compliance; or
- (2) 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.

(d) *Sentence.* A person convicted under this section shall be punished by:

- (1) A fine of not less than \$200.00 and not more than \$500.00 for each offense;
- (2) Incarceration for not more than 180 days for each offense; and/or
- (3) An order to perform community service for a period not to exceed 200 hours for each offense.

(e) *Venue.* The State's Attorney shall institute actions under this section in a court of competent jurisdiction.

Sec. 2-916. Seized/unclaimed property.

After an administrative law officer has issued a final determination of liability or no liability, any property seized by the County in relation to the subject matter of the final determination of liability or no liability that is not forfeited by operation of law may be reclaimed by the lawful owner provided that all penalties and fees have been paid. The procedures for the reclamation shall be within the discretion of the department head of the County department, agency, board or commission charged with maintaining custody of the property. After the expiration of time during which judicial review of the final determination of liability may be sought or 35 days after the final determination of no liability, unless stayed by a court of competent jurisdiction, any property not so reclaimed may be disposed of by the County department, agency, board or commission charged with maintaining custody of the property as provided by law.

Sec. 2-917. Review under the Administrative Review Law.

Any final decision by the department of administrative hearings 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, except as otherwise may be provided by law for decisions issued prior to the effective date of this Ordinance.

Sec. 2-918. Sanctions; transfer or conveyance of property.

(a) The order to correct a code violation and the sanctions imposed by the County against a respondent property owner as the result of a finding of a code violation shall attach to the property, subject to the interests of all lien holders of record, as well as to the owner of the property, so that the owner cannot avoid the finding of a code violation against the owner by conveying or transferring the property to another. Any subsequent transferee or owner of property takes the property subject to the findings, decision, and order of a hearing officer under this Article if a notice consisting of a copy of the order to correct a code violation and imposing any sanctions and costs, if applicable, and a description of the real estate affected that is sufficient to identify the real estate has been filed in the office of the Recorder of Deeds by the County prior to the transfer or conveyance to the subsequent transferee or owner.

(b) Nothing in this section shall prevent the County from enforcing or seeking to enforce any order of an administrative law officer in any manner which is in accordance with applicable law.

Sec. 2-919. Collection of unpaid fines or other sanctions.

(a) Any fine or other sanction or costs imposed, or any part of any fine or other sanction or costs imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the Administrative Review Law is a debt due and owed to the County and, as such, may be collected in accordance with applicable law. Any subsequent owner or transferee of property takes subject to this debt if a notice has been filed.

(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 County may commence a proceeding in the circuit court of Cook County for purposes of obtaining a judgment on the hearing officer's findings, decision, and order. Nothing in this Section prevents a county from consolidating multiple findings, decisions, and orders against a person or property in such a proceeding.

(c) Upon commencement of the action, the County 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 and the applicable County ordinance. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines or other sanctions and costs imposed by the findings, decision, and order does not exceed the amount authorized by ordinance.

(d) If the court is satisfied that the findings, decision, and order were entered properly within the provisions of the applicable county ordinance and that the respondent had an opportunity for a hearing and for judicial review:

- (1) The court shall render judgment in favor of the County and against the respondent for the amount indicated in the findings, decision, and order plus court costs. The judgment has the same effect and may be enforced in the same manner as other judgments for the recovery of money.

- (2) The court may issue other orders or injunctions, or both, requested by the County to enforce the order of the hearing officer or to correct a Code violation.

Sec. 2-920. 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. 2-921. Fines payable to the department of revenue.

All fines and other monies paid to the County in accordance with this article shall be remitted to the department of revenue.

Sec. 2-922. Petition to set aside default order.

(a) An administrative law 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 law 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 law 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 law 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 County to refund any fines and/or penalties paid pursuant to the vacated order.

Sec. 2-923. Petition by County department for relief from a final order of liability entered in error.

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

(b) The written petition must be filed and signed by the department, agency, board or commission head of the initiating or prosecuting department, agency, board or commission 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 the Code; and
- (4) Should be vacated to avoid a miscarriage of justice. The authority to file and sign a petition under this section is expressly reserved to the department, agency, board or commission head and may not be delegated to other department, agency, board or commission officials or personnel.

(c) Upon the filing of a written petition by a department, agency, board or commission head, the director of administrative hearings 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 re-litigation 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 law 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 directing the County to refund any fines and/or penalties paid pursuant to the vacated order.

Sec. 2-924. Election of remedies.

In no case may the department of administrative hearings conduct an administrative adjudication proceeding for an alleged violation of the County Code where the requested remedy is a punishment of imprisonment; provided, however, where a violation of the code is punishable by fines and other penalties in addition to imprisonment, the County may elect to institute an action with the department of administrative hearings and thereby waive any imprisonment for the code violation. Nothing in this article, however, shall preclude the County from seeking the remedy of imprisonment in a court of law, including imprisonment for failure to comply with the order of an administrative law officer, pursuant to Section [2-915](#) (relating to violations of orders).

Sec. 2-925. Other provisions not limiting.

(a) Notwithstanding any other provision of the County Code, all provisions of the code may be enforced by instituting an administrative adjudication proceeding with the department of administrative hearings as provided in this article.

(b) Notwithstanding any other provision of the County Code, any enforcement action which may be exercised by another department, agency, board or commission of the County may also be exercised by the department of administrative hearings; provided, however, that the department shall not have authority to revoke or suspend any County license.

Sec. 2-926. Transition.

The departments, agencies, boards and commissions of County government, authorized by ordinance, shall continue to conduct hearings according to law adopted prior to the effective date of this ordinance until such time as they are notified by the Department of Administrative Hearings to forward matters, for hearing, exclusively to the Department of Administrative Hearings. Upon notification, the departments, agencies, boards and commissions will participate, exclusively, in accordance with hearings as described by the provisions of this article.

Sec. 2-927. General repeals.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Sec. 2-928. Appropriations.

The Board of Commissioners shall appropriate such funds annually, as necessary, to carry out the provisions of this Ordinance.

Sec. 2-929. Effective date.

This Ordinance shall take effect January 1, 2009.

Approved and adopted this 3rd day of December 2008.

TODD H. STROGER, President
Cook County Board of Commissioners

Attest: DAVID ORR, County Clerk