

ORDINANCE NO. MC-1078

AN ORDINANCE AMENDING CHAPTER 2 OF THE HOMEWOOD MUNICIPAL CODE TO ADMINISTRATIVELY ADJUDICATE MUNICIPAL CODE VIOLATIONS UNDER DIVISION 2.1 OF THE ILLINOIS MUNICIPAL CODE

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2-1, provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be considered proper; and

WHEREAS, the Village of Homewood is a municipal corporation and non-home rule unit of local government under the Constitution of the State of Illinois of 1970, as amended (referred to here as “Homewood” or “Village”); and,

WHEREAS, Public Act 103-260 amended Section 1-2.1-1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1) to allow non-home rule units of local government to adopt administrative adjudication procedures previously only available to home rule municipalities; and

WHEREAS, the corporate authorities of the Village of Homewood believe that reorganizing the Village’s Code Hearing Unit under Division 2.1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1 *et seq.*) would provide the Village with an efficient method for adjudicating alleged ordinance violations that is less costly to both the Village and the accused, provides the necessary due process protections for the accused, and allows the Village to more efficiently protect its residents’ health, safety and general welfare; and,

WHEREAS, in furtherance of this belief, the corporate authorities have reviewed the proposed revisions to the Homewood Municipal Code, attached and incorporated as *Exhibit A*; and,

WHEREAS, upon review of the same, the corporate authorities believe this revision of the Homewood Municipal Code would meet the goals outlined above; and,

WHEREAS, the corporate authorities of the Village find that the proposed revisions to the Homewood Municipal Code are in the best interests of the Village and its citizens.

NOW, THEREFORE, be it ordained, by the President and Board of Trustees of the Village of Homewood as follows:

SECTION ONE - AMENDMENTS TO THE HOMEWOOD MUNICIPAL CODE:

Chapter 2, Article VII titled "Administrative Adjudication of Code Violations" is deleted in its entirety and replaced with the language contained in the attached Exhibit A.

SECTION TWO - REPEAL OF CONFLICTING PROVISIONS:

All ordinances, resolutions, and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, repealed on the effective date of this Ordinance.

SECTION THREE - SEVERABILITY:

If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, this invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION FOUR - EFFECTIVE DATE:

This ordinance shall be in full force and effect on January 1, 2024 and after its passage, approval, and publication in accordance with law.

PASSED and APPROVED this 12th day of December, 2023.

Village President

ATTEST:

Village Clerk

Ayes: _____ Nays: _____ Abstain: _____ Absent: _____

Exhibit A

ARTICLE VII. - ADMINISTRATIVE ADJUDICATION OF CODE VIOLATIONS

Sec. 2-482. Creation of a system of administrative adjudication.

The Village of Homewood pursuant to Article I, Division 2.1 of the Illinois Municipal Code, 65 ILCS 5/1-2.1-1 *et seq.*, establishes a system of administrative adjudication, subject to the limitations of this Chapter, that provides due process of law, including notice and an opportunity for a hearing for all affected persons. If a conflict between this Chapter and Article I, Division 2.1 of the Illinois Municipal Code exists, then the Illinois Municipal Code shall prevail.

Sec. 2-483. Establishment of code hearing unit.

- (a) There is hereby established a Code Hearing Unit within the village responsible for conducting adjudicatory hearings, exercising the powers conferred in this Chapter and in the manner set out in this Chapter.
- (b) The Code Hearing Unit shall have jurisdiction to adjudicate all alleged violations of the Code, except for: (i) proceedings not within the statutory authority of the village; (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles; and, (iii) any reportable offense under Section 6-204 of the Illinois Vehicle Code.
- (c) The establishment of the Code Hearing Unit does not preclude the village from using other methods to enforce its Code.
- (d) The Code Hearing Unit shall consist of one or more Hearing Officers, as that term is defined herein, and such other agents or employees assigned to assist the Hearing Officer by the village.

Sec. 2-484. Definitions.

For this Chapter, these definitions shall apply unless the context indicates or requires a different meaning:

- (a) “Adjudicatory Hearings” means any hearing called by the Code Hearing Unit under this Chapter.
- (b) “Code” means the Homewood Municipal Code.
- (c) “Code Hearing Unit” is defined in Section 2-483 above.

- (d) “Complaint” means a written pleading, filed with the Code Hearing Unit by an authorized official of the village, which alleges a violation of the Code.
- (e) “Final Administrative Order” is defined in Section 2-488 below.
- (f) “Hearing Officer” means an agent of the village whose duty it is to:
 - (1) hear testimony and accept evidence relevant to the existence of an alleged violation of the Code;
 - (2) issue subpoenas directing witnesses to appear and give relevant testimony at the adjudicatory hearing, upon the request of the parties or their representatives;
 - (3) preserve and authenticate the record of the adjudicatory hearing and all exhibits and evidence introduced at the adjudicatory hearing;
 - (4) issue a determination, based on the evidence presented at the adjudicatory hearing, of whether a violation of the Code exists; and,
 - (5) impose penalties consistent with applicable provisions of the Code and assess costs after finding a party liable for the charged violation, except, however, that the Hearing Officer shall not have authority to (i) impose a penalty of incarceration; or, (ii) impose a fine either over \$50,000, or 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 Circuit Court of Cook County. Any such fine imposed under this Chapter shall be exclusive of costs of enforcement or costs imposed to secure compliance with the Code and shall not apply to cases to enforce the collection of any tax imposed and collected by the village.
- (g) A “Non-Emergency Situation” means any situation that does not reasonably constitute a threat to the public interest, safety or welfare.

Sec. 2-485. Requirements of hearing officers.

- (a) Any attorney licensed to practice law in the State of Illinois for at least three years may be a Hearing Officer, provided that they comply with the provisions of this Section.

- (b) Before conducting adjudicatory hearings, Hearing Officers shall complete a formal training program that includes:
 - (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 they will adjudicate;
 - (3) Observation of administrative hearings; and,
 - (4) Participation in hypothetical cases, including ruling on evidence and issuing final orders.
- (c) A person who has served as a judge in Illinois is not required to fulfill the requirements of subsection (b), herein.
- (d) Any person seeking to be appointed as a Hearing Officer for the village must present evidence of their compliance with this Section to the corporate authorities, in such form as considered appropriate by the corporate authorities.

Sec. 2-486. Proceedings for adjudicatory proceedings.

- (a) The filing of the Complaint shall institute proceedings before the Code Hearing Unit.
- (b) Parties shall be served with process in a manner reasonably calculated to give actual notice. For the purposes of this Chapter, "a manner reasonably calculated to give actual notice" shall mean, as appropriate, personal service of process upon a party, its employee or its agent; service by First-Class Mail at a party's address; or notice posted upon the property where the alleged Code violation is found when the party is the owner or manager of the property. If the village requires the party to respond to the Complaint within a specified amount of time, the village shall file a reply with the Code Hearing Unit within the same amount of time afforded to the party responding to the Complaint.
- (c) Parties shall be given notice of any adjudicatory hearing. This notice must, at a minimum, include: (i) the type and nature of the Code violation to be adjudicated; (ii) the date and location of the adjudicatory hearing; (iii) the legal authority and jurisdiction under which the adjudicatory hearing is to be held; and, (iv) the penalties for failure to appear at the adjudicatory hearing.

- (d) Parties shall be provided with an opportunity for an adjudicatory 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, as well as the production of relevant documents.
- (e) Adjudicatory hearings shall be scheduled with reasonable promptness, provided that for adjudicatory 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 an adjudicatory hearing. If service is provided by mail, the 15-day period shall begin on the day that the notice is deposited in the mail.

Sec. 2-487. Hearing; evidence.

The formal and technical rules of evidence shall not be applied in an adjudicatory hearing under this Chapter. The Hearing Officer may accept any evidence, including hearsay, if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs.

Sec. 2-488. Findings, decision and order.

- (a) At the conclusion of the adjudicatory hearing, the Hearing Officer shall make a determination (the "Final Administrative Decision"), based on the evidence presented at the adjudicatory hearing, of whether a violation of the Code exists. The Final Administrative Decision 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.
- (b) Upon a finding of liability, in addition to any fine imposed for underlying code violation, the Hearing Office shall impose an additional thirty-dollar (\$30.00) penalty as an administrative adjudication hearing cost. This additional penalty shall be independent of any fine that may be reduced by the Hearing Office for compliance with the Code.
- (c) A copy of the Final Administrative Decision shall be served on the Parties within five (5) days after issuance. The Final Administrative Decision shall be served in a manner allowed by Section 2-486(b) unless the parties agree to an alternative form of service.

- (d) Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in the Code.

Sec. 2-489. Review under Illinois Administrative Review Law.

Any Final Administrative Decision by a Code Hearing Unit, that a Code violation exists, shall be 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.*

Sec. 2-490. Judgment on findings, decision 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 Illinois Administrative Review Law are a debt due and owing the village 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 Administrative Decision 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 not complied with a judgment ordering a defendant to correct a Code violation or imposing any fine or other sanction because of a Code violation, any expenses incurred by a village 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 village and may be collected in accordance with applicable law. Prior to any expenses being fixed by a Hearing Officer under this subsection, the village shall provide 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 this hearing, which shall not be less than seven days from the date that notice is served. If notice is served by mail, the seven-day period shall begin 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, 735 ILCS 5/12-101 *et seq.*, or by the Uniform

Commercial Code, 810 ILCS 5/1-101 *et seq.*, 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 village under this Chapter. 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 defendant's failure to appear at the adjudicatory hearing was for good cause or at any time if the defendant establishes that the village did not provide proper service of process. If any judgment is set aside pursuant to this subsection, the Hearing Officer shall have the authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the village because of the vacated default judgment.

Sec. 2-491. Petition to vacate default order; fee.

After entry of an order finding the defendant in default and liable, the hearing officer shall not entertain a request to vacate the default filed more than 21 days after issuance of the default order unless the defendant first pays an administrative fee in the amount provided on the village fee schedule to the village. The administrative fee shall be due when the defendant files a request to return the matter to the administrative hearing call.

Sec. 2-492 - 2-567. - Reserved.