

VILLAGE OF ANTIOCH

Ordinance No. 10-04-09

***AN ORDINANCE IMPLEMENTING STATE OF ILLINOIS STATUTES ALLOWING FOR THE
ESTABLISHMENT OF A CODE HEARING DEPARTMENT FOR ADMINISTRATIVE
ADJUDICATIONS IN ANTIOCH, ILLINOIS***

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES

OF THE

VILLAGE OF ANTIOCH, ILLINOIS

ON

APRIL 5, 2010

**Published in pamphlet form by authority of the Village Board
of the Village of Antioch, Lake County, Illinois,
this 9th day of April, 2010**

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ORDINANCE NO. 10-04-09

AN ORDINANCE IMPLEMENTING STATE OF ILLINOIS STATUTES ALLOWING FOR THE ESTABLISHMENT OF A CODE HEARING DEPARTMENT FOR ADMINISTRATIVE ADJUDICATIONS IN ANTIOCH, ILLINOIS

WHEREAS, the Village of Antioch, Illinois is a non home rule municipality organized under the laws of the State of Illinois; and

WHEREAS, the Illinois Compiled Statutes provide for the establishment of a Code Hearing Department within the municipal government; and

WHEREAS, it is the desire of the corporate authorities of the Village of Antioch to establish a Code Hearing Department to expedite the prosecution and correction of municipal code violations,

BE IT THEREFORE ORDAINED by the corporate authorities of the Village of Antioch, Lake County, Illinois, as follows:

SECTION 1: That Title I, Chapter 6 of the Antioch Municipal Code shall be amended to add Article D, Code Hearing Department, which shall read as follows:

D.1. 65 ILCS 5/1-2.2-1, et seq., "Code Hearing Departments," 65 ILCS 5/11-31.1-1 et. seq., "Building Code Violations," and 625 ILCS 5/11-208.3 "Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Condition of Vehicles," as from time to time amended, are hereby adopted in their entirety and any person charged with the violation of a municipal ordinance may be prosecuted under and in accordance with the provisions herein.

D.2. A Code Hearing Department is established as an independent agency of the municipal government to adjudicate any violation of a Municipal Ordinance except for moving violations under the Illinois Vehicle Code, and any reportable offenses pursuant to Section 6-204 of the Illinois Vehicle Code.

D.3. Individuals authorized to issue Code violations are any and all police officers, all community service officers, all building code inspectors, the Administrator of Planning, Zoning and Building and any other person appointed by the Mayor to issue Code violations. These individuals shall be called compliance administrators.

D.4. The Mayor, with advice and consent of the Village Board, shall appoint a hearing officer to hear contested hearings under this Ordinance. Prior to conducting proceedings under this ordinance, hearing officers shall successfully complete a formal training program that includes the following:

- A) Instruction on the Rules of Procedure of the hearing that they will conduct;
- B) Orientation to each subject area of the code violations they will administer;
- C) Observation of administrative hearings; and

D) Participation in hypothetical cases, including rules of evidence and issuing final orders.

In addition, every hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three (3) years. **[65 ILCS 5/1-2.2-40]**

D.5. Rules Applicable to All Code Violations.

1. *Compliance Administrator.* The Village Administrator shall appoint a Compliance Administrator(s) authorized to adopt, distribute and process parking and other violation notices, collect money paid as fines and penalties for violation of certain ordinances, and operate an administrative adjudication system. **[625 ILCS 5/11-208.3(b)(1)]**

2. Any person receiving a violation shall have an opportunity for a hearing in which a party may contest the merits of the alleged violation. Persons appearing at the hearing may be represented by counsel at their own expense. At the hearing, a hearing officer shall preside and hear testimony and accept evidence as to the existence or non-existence of a code violation. **[65 ILCS 5/1-2.2-35; 625 ILCS 5/11-208.3(b)(4)]**

3. A final determination of liability shall occur following after a hearing officer's determination of liability and the exhaustion or failure to exhaust the administrative review procedure provided in this ordinance. The hearing officer's determination of liability shall become final: (a) upon denial of a timely petition to set aside that determination, or (b) upon expiration of the period for filing the petition without such filing having been made. **[625 ILCS 5/11-208.3(b)(7)]**

4. At any time prior to the hearing date, the hearing officer may, at the request of either party, issue subpoenas for witnesses to appear and give testimony at the hearing. **[65 ILCS 5/1-2.2-25]**

5. If on the date set for hearing the defendant or his attorney fails to appear, the hearing officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the Code violation. **[65 ILCS 5/1-2.2-25]**

6. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Ordinance. **[65 ILCS 5/1-2.2-35; 625 ILCS 5/11-208.3(b)(4)]**

7. At the conclusion of the hearing, the hearing officer shall make a determination based upon the evidence presented. The determination shall be in writing. The findings, decision, and order shall include (1) the hearing officer's finding of facts; (2) a decision of whether or not the Code violation exists based on the finding of facts; and (3) an order that states the sanction imposed or dismisses the case if a violation if not proven. A copy of the findings, decision and order shall be served on the defendant within five days after it is issued. **[65 ILCS 5/1-2.2-45]**

8. The findings, decision, and order of the hearing officer shall be subject to review in the Judicial Circuit Court of Lake County, Illinois. The provisions of the Administrative Review

Law, and the rules adopted pursuant thereto, shall apply to and govern every action for the judicial review of the findings, decision and order of a hearing officer under this ordinance. **[65 ILCS 5/1-2.2-50; 625 ILCS 5/11-208.3(d)]**

9. 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 Administrative Review Law shall be a debt due and owing the Village of Antioch, and, as such, may be collected in accordance with applicable law. Payment in full of any fine or penalty resulting from a standing, parking or compliance violation shall constitute a final disposition of that violation. **[625 ILCS 5/11-208.3(e)]**

D.6. Instituting Code Hearing Proceedings.

1. Code Violations Other Than Building or Parking, Standing or Compliance Violations

When a compliance administrator finds that a code violation exists, that individual shall note the violation on a multiple copy violation notice that indicates:

- A) the name and address of the alleged violator;
- B) the type and nature of the violation;
- C) the date and time the violation was observed;
- D) the names of witnesses to the violation

The violation form shall be forwarded to the code hearing department where a docket number shall be stamped on all copies of the report and a hearing date shall be noted in the blank spaces provided for that purpose on the form. The hearing date shall not be less than 30 nor more than 40 days after the violation is reported.

One copy of the violation report form shall be maintained in the files of the code hearing department and shall be part of the record of hearing, one copy of the report form shall be returned to the individual representing the municipality so that he or she may prepare evidence of the code violation for presentation at the hearing, and one copy of the report form shall served by first class mail to the defendant along with a summons commanding the defendant to appear at the hearing. **[65 ILCS 5/1-2.2-20]**

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 Village may commence a proceeding in said circuit court for purpose of obtaining a judgment on the findings, decision and order. Nothing in this section shall prevent the Village from consolidating multiple findings, decision, and orders against a person in such of a proceeding. Upon commencement of the action, the Village 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 was issued in accordance with the applicable municipal ordinance. Service of the summons and a copy of the petition may be made by any method provided for by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions, and costs imposed by the findings, decision and order does not exceed \$2,500. If the court is satisfied that the findings,

decision and order was entered in accordance with the requirements of this ordinance and 65 ILCS 5/1-2.2-1 et seq. and that the defendant had an opportunity for a hearing under this ordinance and for judicial review as provided:

- i) the court shall render judgment in favor of the municipality and against the defendant for the amount indicated in the findings, decision and order, plus costs;
- ii) the judgment shall have the same effect and may be enforced in the same manner as other judgments for recovery of money; and
- iii) the court may also issue any other orders and injunctions that are requested by the Village to enforce the order of the hearing officer to correct a code violation. **[65 ILCS 5/1-2.2-55]**

2. Building Code Violations

When a compliance administrator finds a code violation while inspecting a structure or property, he or she shall note the violation on a multiple copy violation notice indicating:

- A) the name and address of the structure;
- B) the type and nature of the violation;
- C) the date and time the violation was observed;
- D) the names of witnesses to the violation;
- E) the address of the structure or property where the violation is observed.

Service. The violation report form shall be forwarded to the Code Hearing Department and a docket number shall be stamped on all copies of the report and a hearing date shall be noted on the form. The hearing date shall not be less than 30 nor more than 40 days after the violation is reported. One copy of the violation report shall be maintained in the files of the Code Hearing Department and shall become part of the record of the hearing. One copy of the report shall be returned to the individual issuing the code violations. One copy of the report form shall be served by first class mail to the defendant along with a summons commanding the defendant to appear on the specified hearing date.

If the name of the owner of the structure cannot be ascertained or if service on the owner cannot be made by mail, service may be made on the owner by posting or nailing a copy of the violation report form on the front door of the structure where the violation is found, not less than 20 days before the hearing is scheduled. **[65 ILCS 5/11-31.1-4]**

Defenses to Building Code Violations. It shall be a defense to a building code violation charged if the owner, his attorney, or any other agent or representative proves to the hearing officer's satisfaction that:

- A) The building code violation alleged in the notice does not in fact exist, or at the time of the hearing, the violation has been remedied or removed;
- B) The building code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the dwelling free of such violations, the current occupants continue to cause the violations;

- C) An occupant or resident of the dwelling has refused entry to the owner or his agent to all or part of the dwelling for the purpose of correcting the building code violation.

Sanctions applicable to owner; property. The order to correct a building code violation and the sanction imposed by the Village as the result of a finding of a building code violation under this Chapter shall attach to the property as well as to the owner of the property, so that a finding of a building code violation against one owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of property takes subject to the findings, decision and order of a hearing officer under this ordinance.

3. Parking, Standing or Compliance Notice Violations

A parking, standing, or compliance violation notice shall:

- A) specify the date, time and place of violation of a parking, standing, or compliance regulation;
- B) specify the particular regulation violated;
- C) specify the fine and any penalty that may be assessed for late payment, when so provided by ordinance;
- D) specify the vehicle make and state registration number;
- E) specify the identification number of the person issuing the notice;
- F) state that payment of the indicated fine, and of any applicable penalty for late payment, shall operate as a final disposition of the violation;
- G) contain information as to the availability of a hearing in which the violation may be contested on its merits;
- H) specify the time and manner in which a hearing may be had.

[625 ILCS 5/11-208.3(b)(2)]

Service. Service of the parking, standing, or compliance violation notice may be achieved by affixing the original or a facsimile of the notice to an unlawfully parked vehicle or by handing the notice to the operator of a vehicle if he/she is present. A person authorized by ordinance to issue and serve parking, standing, and compliance violation notices shall certify as to the correctness of the facts entered on the violation notice by signing his/her name to the notice at the time of service or in the case of a notice produced by a computerized device, by signing a single certificate to be kept by the traffic compliance administrator attesting to the correctness of all notices produced by the device while it was under his/her control. The original or a facsimile of the violation notice shall be retained by the traffic compliance administrator, and there shall be a record kept in the ordinary course of business. A parking, standing, or compliance violation notice issued, signed and served in accordance with this section, or a copy of the notice, shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice. The notice or copy shall be admissible in any subsequent administrative adjudication or legal proceedings. **[625 ILCS 5/11-208.3(b)(3)]**

Service of additional notices may be sent by first class United States mail, postage prepaid, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State, or, under Section 11-1306 of the Illinois Vehicle Code, to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of lease. The

service shall be deemed complete as of the date of deposit in the United States mail. The notices shall be in the following sequence and shall include but not be limited to the information specified herein:

A) Second Notice of Violation. This notice shall:

- i) specify the date and location of the violation cited in the parking, standing, or compliance violation notice;
- ii) specify the particular regulation violated;
- iii) specify the vehicle make and state registration number;
- iv) specify the fine and any penalty that may be assessed for late payment when so provided by ordinance;
- v) specify the availability of a hearing in which the violation may be contested on its merits;
- vi) specify the time and manner in which the hearing may be had;
- vii) state that failure either to pay the indicated fine and any applicable penalty, or to appear at a hearing on the merits in the time and manner specified, will result in a final determination of violation liability for the cited violation in the amount of the fine or penalty indicated;
- viii) state that, upon the occurrence of a final determination of violation liability for the failure, and the exhaustion of, or failure to exhaust, available administrative or judicial procedures for review, any unpaid fine or penalty will constitute a debt due and owing the Village of Antioch.

B) A notice of final determination of parking, standing, or compliance violation liability. This notice shall be sent following a final determination of parking, standing, or compliance violation liability and the conclusion of judicial review procedures taken under this section. The notice shall:

- i) state that the unpaid fine or penalty is a debt due and owing the municipality;
- ii) contain warnings that failure to pay any fine or penalty due and owing the municipality within the time specified may result in the municipality's filing a petition in the circuit Court to have the unpaid fine or penalty rendered a judgment as provided by this section, or may result in suspension of the person's driver's license for failure to pay fines or penalties for ten or more parking violations under Section 6-306.5 or the Illinois Vehicle Code.

[625 ILCS 5/11-208.3(b)(5)(i)(ii)]

C) A notice of impending driver's license suspension shall:

- i) be sent to the person liable for any fine or penalty that remains due and owing on ten or more parking violations;
- ii) state that failure to pay the fine or penalty owing within 45 days of the notice's date will result in the municipality notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of the Illinois Vehicle Code;

- iii) state that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self-addressed, stamped envelope to the municipality along with a request for the copy;
- iv) be sent by first class United State mail, postage prepaid, to the address recorded with the Secretary of State.

[625 ILCS 5/11-208.3(b)(6)]

Hearings on standing, parking, and condition of vehicles. An opportunity for a hearing for the registered owner of the vehicle cited in the parking, standing or compliance violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under Section 11-1306 of the Illinois Vehicle Code, to the lessee of a vehicle cited in the violation notice likewise shall be provided an opportunity for a hearing of the same kind afforded the registered owner. The hearings shall be recorded, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this section may be represented by counsel at their expense. **[625 ILCS 5/11-208.3(b)(4)]**

Final determinations of violation liability. A final determination of violation liability shall occur following failure to pay the fine or penalty after a hearing officer's determination of violation liability and the exhaustion of or failure to exhaust any administrative review procedures provided by ordinance. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the hearing officer's determination of violation liability shall become final:

- A) upon denial of a timely petition to set aside that determination; or
 - B) upon expiration of the period for filing the petition without a filing having been made.
- [625 ILCS 5/11-208.3(b)(7)]**

A petition to set aside a determination of parking, standing or liability may be filed by a person owing an unpaid fine or penalty and shall be filed within 30 days of the finding of liability and ruled upon by the Compliance Administrator within 30 days thereafter. The grounds for such a petition are limited to: (a) the person not having been the owner or lessee of the cited vehicle on the date the violation notice was issued, (b) the person having already paid the fine or penalty for the violation in questions and (c) excusable failure to appear at or request a new date for a hearing. After the determination of violation liability has been set aside upon a showing of just cause, the person owing the unpaid fine or penalty shall be provided with a hearing on the merits for the violation. **[625 ILCS 5/11-208.3(b)(8)]**

Procedures for Non-Residents. If the alleged violator does not reside within the State of Illinois, he or she may contest the violation in writing. In such circumstances, the hearing officer must receive a request in writing from the non-resident to contest the violation seven days prior to the initial hearing. If the hearing officer receives such a written request, the non-resident may submit his or her position, in writing, as to why the issuance of the violation was improper. **[625 ILCS 5/11-208.3(b)(9)]**

D.7. Fines Applicable to All Offenses

The Fines that may be levied by the Hearing Officer are set forth in Section 1-3-1A of the Antioch Municipal Code.

D.8. Costs to be taxed. In addition to any fine imposed hereunder, the Hearing Officer shall, upon a finding of guilty of any offense charged, tax the sum of \$25.00 per offense as costs. The costs so collected shall be used to defray the expense of staffing, maintaining, administering, and providing security for the adjudication court system. The Finance Director shall maintain records showing the actual costs of operation once established, and shall report periodically to the Village Board on the balance between costs collected and the expense of operations so that the corporate authorities may review the amount of costs imposed and adjust these amounts from time to time to ensure that they are as close as practicable to the actual expenses of operation.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS, ON THIS 5TH DAY OF APRIL, 2010.


AYES: 6: Pierce, Poulos, Sakas, Crosby, Wolczyk and Jozwiak.

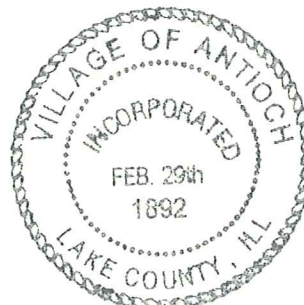
NAYS: 0.

ABSENT: 0.


LAWRENCE M. HANSON, MAYOR

ATTEST


CANDI L. ROWE, VILLAGE CLERK



STATE OF ILLINOIS)
)
COUNTY OF LAKE) SS

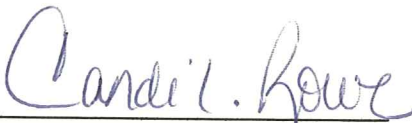
CERTIFICATE

I, Candi L. Rowe, certify that I am the duly appointed Municipal Clerk of the Village of Antioch, Lake County, Illinois.

A. I certify that on April 5, 2010, the Corporate Authorities of such municipality passed and approved Ordinance No. 10-04-09, entitled "***AN ORDINANCE IMPLEMENTING STATE OF ILLINOIS STATUTES ALLOWING FOR THE ESTABLISHMENT OF A CODE HEARING DEPARTMENT FOR ADMINISTRATIVE ADJUDICATIONS IN ANTIOCH, ILLINOIS***" which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 10-04-09, including the Ordinance and cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on April 9, 2010, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Antioch, Illinois, this 9th day of April, 2010.


Candi L. Rowe, Village Clerk

