

CHAPTER 21

CODE HEARING DEPARTMENT

- 1-21-1: PURPOSE
- 1-21-2: CODE HEARING DEPARTMENT ESTABLISHED
- 1-21-3: HEARING OFFICER
- 1-21-4: INSTITUTING CODE HEARINGS
- 1-21-5: SUBPOENAS
- 1-21-6: CONTINUANCES
- 1-21-7: HEARING AND EVIDENCE
- 1-21-8: FINDINGS, DECISION AND ORDER
- 1-21-9: DEBT DUE TO VILLAGE
- 1-21-10: ENFORCEMENT IN THE CIRCUIT COURT
- 1-21-11: DEFENSES TO CODE VIOLATIONS
- 1-21-12: SANCTIONS APPLICABLE TO THE OWNER AND PROPERTY

1-20-1: PURPOSE:

The purpose of this Chapter is to expedite the prosecution and correction of Holiday Hills Municipal Code (“Code”) violations in a fair and efficient manner as may be allowed by law and directed by ordinances through an administrative adjudication of violation of Village ordinances and establish a schedule of fines and penalties, and authority and procedures for the collection of unpaid fines and penalties. To that end, the Village adopts:

1. 65 ILCS 5/1-2.2-1 *et seq.*, Code Hearing Departments, which authorizes a non-home rule municipality to create and implement a system of administrative adjudications for Code violations;
2. 65 ILCS 5/11-31.1-1 *et seq.*, Building Code Violations, which authorizes a municipality to adopt a code hearing department for building code violations;
3. 65 ILCS 5/11-208.3, Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Conditions of Vehicles and Automated Traffic Law Violations, which authorizes a municipality to create and implement a system of administrative adjudication of violations of traffic regulations concerning the standing, parking or condition of vehicles;
4. 65 ILCS 5/11-208.6, Automated Traffic Law Enforcement; and
5. 65 ILCS 5/11-208.7, Seizure and Impoundment of Motor Vehicles.

All authority granted to the Village under said statutes is implemented as provided in the provisions of these Chapter and this Code.

1-21-2: CODE HEARING DEPARTMENT ESTABLISHED

A Code Hearing Department (“Department”) is hereby established which has the power to enforce compliance with all Village ordinances except for any reportable offense under 625 ILCS 5/6-204 and traffic regulations governing the movement of vehicles and prohibited from local adjudication under 65 ILCS 5/1-2.2-5 other than a notice of violation pursuant to an automated traffic law enforcement system, which shall be enforced pursuant

to this Chapter and other applicable Chapters of this Code.

The establishment of the Department does not preclude the Village from using any legal system or other method to enforce Village ordinances.

The administrator or designee shall be in charge of the operations of the Department. The Administrator's duties shall include scheduling hearings, processing notices and collecting monies paid for fines and penalties assessed after a determination of liability.

1-21-3: HEARING OFFICER:

- A. The position of hearing officer is hereby established. The hearing officer shall be appointed by the President, by and with the consent of the Board of Trustees. The hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three years.
- B. Qualifications of Hearing Officer: Prior to conducting proceedings under this chapter, the hearing officer shall successfully complete a formal training program that includes the following:
 - 1. Instruction on the rules of procedure of the hearing that they will conduct;
 - 2. Orientation to each subject area of the code violations that they will administer;
 - 3. Observation of administrative hearings; and
 - 4. Participation in hypothetical cases, including rules and evidence and issuing final orders.
- C. Duties of Hearing Officer: The hearing officer 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 and receive evidence;
 - 4. Issue subpoenas;
 - 5. Rule upon motions, objections and the admissibility of evidence;
 - 6. 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 books, records or other information;
 - 7. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
 - 8. Regulate the course of the hearing in accordance with this Chapter, or other applicable law;
 - 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 and fees upon finding a party liable for the charged violation; and
 - 11. In no event shall a hearing officer have the authority to impose a penalty of imprisonment.

1-21-4: INSTITUTING CODE HEARINGS:

When a police officer or other individual authorized to issue a code violation finds a code violation to exist, the violation shall be noted on a multiple copy violation notice and report form. Violation notices for all violations except automated traffic law violations shall contain, but shall not be limited to, the following information:

1. The name of the party violating the ordinance, if known.
2. The date and time of the violation (date of issuance).
3. The type and nature of the violation and the ordinance violated.
4. Vehicle make and state registration number (if applicable).
5. The address or location where the violation has occurred.
6. The names of any witnesses to the violation.
7. The signature and identification number of the person issuing the notice.
8. The date and location of the adjudicating hearing of the ordinance violations, which date shall be not less than 21 nor more than 65 days after the date of the violation notice and the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing or shall provide instructions to the alleged violator that a fine may be paid or the violator may request a hearing date on the violation.
9. Any violation notice issued, signed and served in accordance herewith, or a copy of the notice, shall be prima facie evidence of the correctness of the facts shown on the notice.

1-21-5: SUBPOENAS

- A. Issuance: All subpoenas shall be issued only upon application and approval by the hearing officer after a determination by the hearing officer as to whether the requested testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is relevant to the case and relates to a contested issue in the case.
- B. Content: 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 witness and the production of the documents or other items described in the subpoena;
 4. The time for the appearance of the witness and the production of the documents or other items described in the subpoena; and
 5. The place for the appearance of the witness and the production of the documents or other items described in the subpoena.
- C. Appearance: In no event shall the date identified for the appearance of a witness or the production of documents or other items be less than seven days after service of the subpoena.
- D. Contesting the Subpoena: Within three business days of being served with a subpoena issued in accordance with this chapter, the recipient of the subpoena may contest the order authorizing the issuance of the subpoena to the hearing officer, setting forth in detail the recipient's objections to the subpoena. Upon receipt of the contest to the subpoena, the hearing officer shall review the objections and , upon review, enter the appropriated order.

1-21-6: CONTINUANCES

No continuances shall be authorized by the hearing officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the alleged violator. Lack of preparation shall not be grounds for a continuance. Inconvenience or nonattendance at work shall not be grounds for a continuance. Any continuance authorized by the hearing officer under this Chapter shall not exceed the next scheduled date for the hearing officer to hear Village cases.

1-21-7: HEARING AND EVIDENCE

- A. At the hearing, the officer shall preside, shall hear testimony and shall accept any evidence relevant to the existence or nonexistence of a Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.
- B. The case for the Village may be presented by an employee designated by the President or by an employee of the Building Department or Police Department. The case for the Village shall not be presented by an employee of the Ordinance Enforcement Department. The case for the alleged violator may be presented by the alleged violator, his or her attorney, any other agent or representative of the defendant.
- C. Nonresidents may, in lieu of presenting testimony in person, provide written testimony under oath and duly notarized, which testimony shall be accepted by the hearing officer if received before the hearing date.
- D. If on the date set for the hearing the alleged violator or his or her attorney fails to appear or present evidence, the hearing officer may find the alleged violator in default and shall proceed with the hearing and accept evidence relevant to the existence of a code violation.
- E. Upon finding the alleged violator in default, the Administrator shall send or cause to be sent notices by first class mail, postage prepaid to the violator who received the notice of an ordinance violation; or, in the case of a violation of the automated traffic control system, the registered owner or operator of the cited vehicle at the address as recorded with the Secretary of State, and shall be sent to the lessee of the cited vehicle at the address last known to the lessee of the cited vehicle at the time of the lease. Service of notices sent in accordance herewith shall be complete as of the date of deposit in the United States mail.

1-21-8: FINDINGS, DECISION AND ORDER

- A. Determination by Hearing Officer: At the conclusion of the hearing, the hearing officer shall make a determination of the basis of the evidence presented at the hearing as to whether or not a code violation exists. The determination shall be in writing and shall be designated as the findings, decision and order. The findings, decision and order shall include:
 - 1. The hearing officer's findings of fact;
 - 2. A decision of whether or not a code violation exists based upon the findings of fact;
 - 3. An order that states the sanction or dismisses the case if a violation is not proven; and
 - 4. A monetary sanction and/or any other sanction for a violation under this Chapter including fees and costs.

- B. A finding of liable, after evidences are heard by the hearing officer, shall result in an administrative hearing cost of \$75.00. The administrative hearing cost is in addition to any other fines or sanction imposed by the hearing officer.
- C. Copy of Findings: A copy of the findings, decision and order shall be served on the violator within five days after it is issued. Service of the findings, decision and order shall be by first class mail as provided for instituting code hearing proceedings. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in this Code.
- D. Debt Due to Village: The fines, penalties, fees and costs contained in this order are a debt due and owing the Village and said total must be paid within 30 days of the date the order is issued by the hearing officer.
- E. Final Orders: The order of the hearing officer becomes final 30 days following entry of the order 30 days from a denial of a timely filed petition to set aside the hearing officer's decision, whichever occurs last. All fines and other monies paid to the Village in accordance with this Section shall be remitted to the Village and deposited in the appropriate Village account as designated by Section 3.03 of this code.
- F. Petition to Set Aside Determination: A petition to set aside the order of the hearing officer must be filed within 30 days from of entry of the hearing officer's order. The petition shall be filed in the Administrator's office. The hearing officer shall set a briefing schedule and hearing date. The grounds for the petition are limited to the following:
 - 1. Lack of proper service;
 - 2. The person not having been the owner or lessee of the property cited on the date the violation notice was issued;
 - 3. The order is against the manifest weight of the evidence, or that new evidence unknown to and unavailable to a party on the date of the hearing will materially affect the order of the hearing officer; or
 - 4. Excusable failure to appear at the hearing or request a new date for a hearing.

In the event the determination is set aside upon a showing of just cause, the Administrator shall set a hearing on the merits for that violation at the earliest available date convenient to all parties.

- G. Violations of Orders: Any person, having received notice and an opportunity for a hearing as provided in this Chapter who knowingly fails to comply with an order issued by a hearing officer under this Chapter, including the issuance of a subpoena, shall, if the order is not stayed by a court of competent jurisdiction prior to its effective date, be guilty of contempt. Contempt shall be punishable by a fine not to exceed \$250.00. Each day that the violation continues shall be considered a separate and distinct offense. In a prosecution under this Section, it shall not be a defense that a person came into compliance with an order, sought judicial review of it or made efforts to comply with an order, subsequent to its effective date.

1-21-9: DEBT DUE TO VILLAGE

Any order to comply, or for a fine, other sanction or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid or uncompleted 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 and, as such, may be collected and enforced in accordance with applicable law.

1-21-10: ENFORCEMENT IN THE CIRCUIT COURT

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, upon authorization of the Village Board, the Village Attorney may commence a proceeding in the 22nd Judicial Circuit Court for the purpose of obtaining a judgment on the findings, decision and order. Nothing in this Section shall prevent the Village from consolidating multiple findings, decisions and orders against a person in such 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 state law and the applicable Village ordinances. Service of the summons and a copy of the petition may be 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, fees and costs imposed by the findings, decision and order does not exceed \$2,500.00. If the court is satisfied that the findings, decision and order was entered in accordance with the requirements of state law and the applicable Village ordinance and that the violator had an opportunity for a hearing and for a judicial review:

1. The court shall render judgment in favor of the Village and against the violator for the amount indicated in the findings, decision and order, plus fees and costs. The judgement shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.
2. 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.

1-21-11: DEFENSES TO CODE VIOLATIONS

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

1. The 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;
2. The code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the structure or premises free of such violation, the current occupants continue to cause the violation; or
3. An occupant or resident of the structure or premises has refused entry to the owner or the owner's agent to all or part of the structure or premises for the purpose of correcting the code violation.

1-21-12: SANCTIONS APPLICABLE TO THE OWNER AND PROPERTY

The order to correct a zoning or building code violation and the sanctions imposed by the Village as the result of a finding of a zoning or building code violation shall attach to the property as well as to the owner of the property, so that a finding of a 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 ownership of the property subject to the findings, decision and order of the hearing officer under this Chapter.