

Code Amendment to Article III Code Hearing Unit

WHEREAS; it is in the best interests of Stephenson County that the Zoning Code be updated from time to time; and

WHEREAS; the following changes are necessary to maintain the Stephenson County Zoning Code in compliance with prevailing code and common law and general practice in the State of Illinois:

BE IT THEREFORE ORDAINED THAT article III be amended by replacing Article III Code Hearing Unit with the following:

Article III Code Hearing Unit

§ 1-15 Establishment and Jurisdiction

A Code Hearing Unit is hereby established pursuant to Section 5-41010 of the Counties Code, 55 ILCS 5/5-41010. There is hereby established a Code Hearing Unit as a division of the County Building and Zoning Department which is authorized to conduct administrative adjudication proceedings for the County, its Departments and officers. The function of the Code Hearing Unit shall be to expedite the prosecution and correction of Code violations. The Code Hearing Unit is authorized to establish a system of administrative adjudications for the enforcement of all provisions of the County Code, except those pre-empted by state law or County Ordinance.

§ 1-16 Adoption of state model.

Hereinafter, the County will adopt the Model Language for Administrative Adjudication of County Violations.

§1-17 Definitions

As used in this chapter, unless the context requires otherwise, the following terms are defined as follows:

Administrative Adjudication Proceedings (or "Hearing") means an evidentiary proceeding before a Hearing Officer instituted under this Article.

Chronic Violator means a person to whom a ticket or citation has been issued on three or more instances during any six (6) month period for independent violations of the Code.

Code means any County ordinance that pertains to or regulates any of the following: animal control; the definition, identification and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse and other forms of solid waste; the construction and maintenance of buildings and structures; sanitation practices; zoning; or truancy.

Code Enforcement Officer means a County employee authorized to issue citations for County Code violations and to conduct inspections of public or private real property to determine whether Code violations exist. The Director of the Stephenson County Building and Zoning Department and his or her designee(s) shall act as Code Enforcement Officers under this Article.

Hearing Officer means a person other than a Code Enforcement Officer or law enforcement officer having the following powers and duties:

- a. To preside at a Hearing called to determine whether a Code violation exists;
- b. To hear testimony and accept evidence from the County, the Respondent, and all interested parties relevant to the existence of a Code violation;
- c. To preserve and authenticate the record of the Hearing and all exhibits and evidence introduced at the hearing;
- d. To issue and sign written findings and a decision and order stating whether a Code violation exists; and
- e. To impose penalties consistent with applicable Code provisions, including but not limited to financial penalties and orders directing a Respondent to abate or cease a Code violation within a specific period of time and to assess costs reasonably related to instituting the proceedings, upon finding the Respondent liable for the charged violation. In no event, however, shall the Hearing Officer have the authority to impose a penalty of incarceration.

Occupant means any person who resides in or on property with the consent of the Property Owner.

Property Owner means the legal or beneficial owner of an improved or unimproved parcel of real estate, including, but not limited to a mortgagee in possession in whom is vested:

- a. All or part of the legal title to the property; or
- b. All or part of the beneficial ownership and the right to the present use and enjoyment of the premises;

Respondent means any person or entity charged with liability for an alleged Code violation and the person or entity to whom the Violation Notice is directed.

Solid Waste means demolition materials, food and industrial processing wastes, garden trash, land clearing waste, mixed refuse, non-combustible refuse, and trash as defined in the Solid Waste Disposal District Act, 70 ILCS 3105/1 et seq.

Tenant means an individual or entity who has a legal right to occupy and control real property.

Violation Notice and Report Form (“Violation Notice”) means the document issued by the Code Enforcement Officer upon his or her determination that a Code violation has occurred, or is ongoing, and contains the information set forth at §1-19 of this Article.

Waste Hauler means any person or entity owning or controlling any vehicle used to carry or transport garbage, refuse, or other forms of solid waste.

§1-18 Hearing Procedures Not Exclusive

This Article does not preclude the County from using any other methods available to it to enforce the provisions of the Code.

§1-19 Hearing Officer – Appointment

The Chairman of the County Board, with the advice and consent of a simple majority of the County Board, shall appoint one or more Hearing Officers for the purposes of this Article. A Hearing Officer shall be an attorney licensed to practice law in the State of Illinois, and may not be a Code Enforcement Officer or other law enforcement officer.

§1-19 Instituting Code Hearing Proceedings

- a. Upon learning of potential Code violation, the Code Enforcement Officer may attempt to remedy the violation by utilizing an informal process, which may include contacting the Respondent and holding a pre-hearing meeting between the Respondent and County staff. At such pre-hearing meeting, a compliance time-line shall be established and documented with an agreement and filed with the Code Hearing Unit prior to any Hearing. If the informal process fails to remedy the violation, or the violation at the property is such that immediate action is required, or if the violation is determined to be the responsibility of a Chronic Violator, the Code Enforcement Officer may forego the informal process and proceed with issuing a Violation Notice and Report Form (“Violation Notice”) as set forth in subsection (b).
- b. Subject to the provisions of subsection (a), when the Code Enforcement Officer observes or is made aware of a Code violation, the Code Enforcement Officer shall note, or in the case of an animal control violation, the Code Enforcement Officer may respond to the filing of a complaint, by noting the violation on a Violation Notice, indicating the following:
 1. The name and address of the Respondent, if known;
 2. The nature of the violation, including a citation to the Code provision at issue;
 3. The approximate date and time the violation was observed;
 4. The names and witnesses to the violation, if any;
 5. The address of the location or property where the violation was observed; and
 6. In the case of an offense relating to a vehicle, the name, address and state vehicle registration number of the vehicle.

- c. The Violation Notice shall also contain a docket number, a Hearing date, and the amount of the possible fines, fees or other possible penalties or remedies available to the County.
- d. The Violation Notice shall further state the following:
 - 1. Prior to the Hearing date, the Respondent may elect to abate or cease the violation for which the Violation Notice was issued, pay the fine listed on the Violation Notice at least five days, and not participate in the Hearing. The Respondent must provide proof of such payment and proof of abatement or cessation of the violation, to the satisfaction of the Hearing Officer, at least five (5) days prior to the Hearing date.
 - 2. That if the Respondent does not voluntarily pay the fine, abate or cease the violation, or appear at the Hearing on the date indicated, then the failure to pay or appear may result in a determination of liability for the cited violation and the imposition of fines, orders to abate or cease the violation, and assessment of costs as set forth in the Code.
 - 3. That upon a determination of liability and the exhaustion of or failure to exhaust procedures for judicial review, any unpaid fine or costs imposed will constitute a debt owed to the County. Further, that the reasonable costs incurred by the County through its abatement of the violation, if any, will likewise become a debt owed to the County by the Respondent.
- e. A copy of the Violation Notice shall be served on the Respondent either personally or by first class mail, postage prepaid, sent to the address of the Respondent. If the name of the Respondent Property Owner cannot be ascertained or if service on the Respondent cannot be made by mail, service may be made on the Respondent Property Owner by posting, not less than 20 days before the Hearing is scheduled, a copy of the Violation Notice in a prominent place on the property where the violation is found. If the Violation Notice requires the Respondent to answer within a certain amount of time, the County must reply to the answer within the same amount of time afforded to the Respondent.
- f. The imposition of fines and/or costs by the Hearing Officer after a Hearing does not satisfy the underlying violation. If the Respondent fails to abate or cease the violation by the Hearing date set forth on the Violation Notice then the Code Enforcement Officer may serve a new Violation Notice on the Respondent for any subsequent violation(s), which will constitute an independent violation subject to the imposition of any fines, fees and any other remedies available under this Article or the Code.

§1-20 Subpoenas; Default

- a. At any time prior to the Hearing date, at the request of the Code Enforcement Officer, the attorney for the County, the Respondent, or the attorney for the Respondent, upon good cause shown, the Hearing Officer assigned to hear the case may issue subpoenas directing witnesses to appear and give testimony at the Hearing.

- b. If the Respondent or the Respondent's attorney fails to appear on the date set for the Hearing, the Hearing Officer may find the Respondent in default and shall proceed with the Hearing and accept evidence relating to the existence of a code violation.

§1-21 Representation at Hearings

The case for the County may be presented by the Code Enforcement Officer or by the State's Attorney. In no event, however, may the case for the County be presented by an employee of the Code Hearing Unit. The case for the Respondent may be presented by the Respondent or the Respondent's attorney. If the Respondent is a corporation, it may appear through any officer, director, manager, or supervisor of the corporation.

§1-22 Evidence at Hearings

The Hearing Officer shall preside at the Hearing, shall hear testimony, and shall accept any evidence relevant to the existence or non-existence of a Code violation on the property indicated. All parties may present evidence, witnesses and cross-examine opposing witnesses. The Code Enforcement Officer shall certify the allegations in the Violation Notice by signing his or her name to the Violation Notice, which shall constitute prima facie evidence of the existence of the Code violation described therein. Failure of the Code Enforcement Officer to sign the Violation Notice shall not invalidate the Violation Notice, but will not establish a prima facie evidence of the code violation at the Hearing. The strict rules of evidence applicable to judicial proceedings do not apply to Hearings authorized under this Article. The admissibility of all evidence and questioning is subject to the discretion of the Hearing Officer.

§1-23 Hearing Procedures

- a. The Hearing Officer will begin the Officer's call by introducing himself or herself to the Respondents and other attendees. The Hearing Officer will inform attendees as to the nature and manner of the proceedings, including such things as information about the order that cases will be called, the need to maintain proper decorum, continuances, acceptable and unacceptable defenses, and the range of financial penalties and legal remedies so available.
- b. Subject to the discretion of the Hearing Officer, cases will generally be called in the following manner:
 - 1. Matters pre-determined which result in a dismissal or settlement of the case;
 - 2. Cases not settled in which an attorney is present on behalf of the Respondent. The Hearing Officer should note in opening remarks that attorneys are not given

preferential treatment, but as officer of the court their presence may be required at court or other time sensitive matters;

3. Respondents seeking a full Hearing;
 4. Respondents moving to set aside a default order. The Hearing Officer shall first decide whether the motion is timely and whether the Officer has jurisdiction to entertain the motion. If timely, the Hearing Officer shall determine the merits of the motion. If the motion is granted, the Hearing Officer should proceed with a Hearing on the case. If the parties agree, Hearing Officer may schedule the Hearing to take place on the next scheduled administrative Hearing call. If no such call is schedule, the Hearing Officer shall set a date for Hearing within twenty-eight (28) days.
 5. Cases in which no Respondent has appeared. The Hearing Officer shall proceed with a Hearing and enter an order on the record.
- c. The Hearing Officer may grant continuances only upon a finding of good cause. Continuances shall not be granted as a matter of course. A Respondent must state the reason for his or her continuance on the record at the Hearing, or in writing at least 48 hours in advance of the Hearing. The basis for any continuance shall be memorialized by the Hearing Officer in a written order. The Hearing Officer may require the Respondent to provide documentation to support any request for a continuance. Unless agreed to by the parties, a continuance shall not be granted beyond the next scheduled Hearing date, or if no Hearings are scheduled, a continuance shall not be in excess of twenty-eight 28 days.
 - d. The County has the burden of proving a Code violation by a preponderance of the evidence.
 - e. The Hearing Officer may permit witnesses to testify via Zoom. However, in such event, to assure that such testimony can be accommodated at the Hearing, the requesting party shall inform the Code Hearing Unit of its intent to present remote testimony at least forty eight (48) hours in advance of the Hearing.
 - f. Evidence, including hearsay, may be admitted only if it is the type commonly relied upon by reasonable prudent persons in the conduct of their affairs. The Hearing Officer shall determine the admissibility, and the appropriate weight, of such testimony.
 - g. Upon the timely request of any party to a Hearing, any person who the Hearing 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.
 - h. The record of any evidentiary Hearing shall be preserved via audio recording and maintained by the Code Hearing Unit, until the time for appeal of the Hearing Officer's Order has expired, or as otherwise required by applicable federal or state law. All other matters shall be recorded via written order or docket entries.

§1-24 Findings, Decision and Order; Available Penalties and Remedies

- a. At the conclusion of the Hearing, the Hearing Officer shall make a determination on the basis of the evidence presented at the Hearing as to whether a Code violation exists. The determination shall be in writing and shall be designated as the Hearing Officer's findings, decision, and order. The findings, decision, and order shall include the Hearing Officer's findings of fact, a determination of whether a code violation exists based on the findings of fact, and an order imposing a fine, Hearing costs, and/or directing the Respondent to abate or cease the violation, or dismissing the case if the violation is not proved.
- b. If the Hearing Officer determines that the Respondent is liable for the cited violation, the Hearing Officer shall enter an order imposing the mandatory Hearing Fees set forth at §1-26 of this Article, along with sanctions for the violations proved, including the imposition of fines, and costs of the County's abatement, if any. In such case, the Hearing Officer shall enter an order imposing fines for the violation(s) proven in the range of \$100.00 to \$1,000.00, per violation, depending upon the severity and nature of the violation, unless the Code otherwise provides for a specified fee/fine for the violation. Depending upon the severity and nature of the violation, the Hearing Officer may impose fines for each day it was proven that the Respondent knowingly failed to abate or cease the violation.
- c. Costs may be recovered in the same manner as fines and penalties. A copy of the findings, decision, and order shall be served by personal service¹ or by any method provided for service of the Violation Notice under Section 5-41020 [55 ILCS 5/5-41020]. The payment of any penalty or fine or costs of the proceedings and the disposition of that money shall be in the manner provided in this Code, unless the County Board provides otherwise when establishing the Code Hearing Unit.²
- d. If, after proper notice and opportunity to be heard, a Respondent fails to abate or cease the violation for which he or she has been found liable, in addition to any other remedies available to it under the Code, the County may initiate abatement or enforcement actions with respect to any such violation. In such circumstances, the Respondent shall be liable for all reasonable costs of abatement. The costs of abatement will, after hearing, be set by the Hearing Officer. The Respondent shall be given at least ten days written notice to assess the costs, via regular mail to the Respondent's last known address.

§1-25 Administrative Review

The findings, decision, and order of the Hearing Officer shall be subject to review in the Circuit Court of Stephenson County. The Administrative Review Law [735 ILCS 5/3-101 et seq.] and the rules adopted pursuant thereto shall apply to and govern every action for the judicial review of the final findings, decision, and order of a Hearing Officer under this Article.

¹ Revise to allow for email form of service? See 5/5-41060 (Adoption of other necessary provisions by county).

² How do other counties require payment?

§1-26 Sanctions; Transfer or Conveyance of Property

The order to correct a Code violation and the sanctions imposed by the Hearing Officer against a Respondent as the result of a finding of a Code violation under this Article 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 by the County prior to the transfer or conveyance to the subsequent transferee or owner.

§1-27 Collection of Fines, Costs or Sanctions; Judgment

- a. All fines, fees and other financial obligations paid to the County in accordance with this Ordinance shall be remitted to the County Treasurer.
- b. Any fine, fee or other financial obligation imposed, or any part of any fine or other sanction or financial obligation imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.] shall be 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 pursuant to Section 1-26 of this Article.
- c. 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 Stephenson County Circuit Court for purposes of obtaining a judgment on the Hearing Officer's findings, decision, and order. Nothing in this Article prevents the County from consolidating multiple findings, decisions, and orders against a person or property in such a proceeding.
- d. Upon commencement of an action under this Section, the County shall file a certified copy of the Hearing Officer's 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 in accordance with this Article and Division 5-41 of the Counties Code. 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 [735 ILCS 5/2-203] 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 \$5,000.
- e. If the court is satisfied that the findings, decision, and order were entered within the requirements of this Ordinance and Division 5-41 of the Counties Code and that the

Respondent had an opportunity for a Hearing under this Article and Division 5-41 of the Counties Code and for judicial review as provided in Section 5-41045 of the Counties Code [55 ILCS 5/5-41045]:

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.
- f. The Stephenson County Administrator and the Stephenson County Board Chairperson, with the concurrence of the State's Attorney, or his designee, may compromise, to the extent the administrator and/or chairperson deem it to be in the best interests of the citizens of Stephenson County, any monetary judgment entered in the favor of the County arising out of an administrative code enforcement fine of less than \$5,000.00; and shall have the authority to execute on the behalf of the County documents releasing the County's judgment lien in exchange for payment of the compromised amount.
- g. The Stephenson County Administrator and the Stephenson County Board Chairperson, with the concurrence of the State's Attorney or its designee, shall also have the authority to execute on behalf of the County documents releasing any other type of lien recorded in favor of the County in the amount of \$5,000.00 or less upon such terms as the Administrator or Chairperson deem to be in the best interest of the citizens of the County.

§1-28 Hearing Fee Schedule

The following fees are hereby adopted for the operation of the Code Hearing Unit:

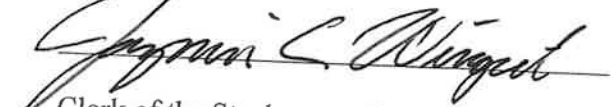
- a. Hearing Officer fee, per Hearing: \$250.00;
- b. Administrative fee, per Hearing: \$50.00.

These fees are to be paid by each Respondent to a Code Violation Notice, but only if the Respondent is found liable for the identified Code violation after a Hearing. These fees are administrative in nature and shall be applied regardless of whether the Hearing Officer imposes a fine or other penalty upon determining that a Code Violation exists.

PASSED this 19th day of October, 2023.


Chairperson of the Stephenson County Board

ATTEST:

A handwritten signature in black ink, appearing to read "Jayman L. Wingard". The signature is written in a cursive style with a long horizontal stroke at the end.

Clerk of the Stephenson County Board