

ORDINANCE NO. 0-2021-26

**AN ORDINANCE AMENDING CHAPTER 2 "ADMINISTRATION" OF THE CODE OF ORDINANCES OF THE CITY OF WHEATON, ILLINOIS, BY THE ADDITION OF ARTICLE X ADMINISTRATIVE ADJUDICATION OF MUNICIPAL CODE VIOLATIONS SECTIONS 2-575 THROUGH 2-590
RECITALS**

WHEREAS, 65 ILCS 5/1-2.1-2 authorizes administrative adjudication of municipal code violations by Ordinance to the extent permitted by state statutes and the Federal and Illinois Constitutions; and

WHEREAS, the City of Wheaton is an Illinois home rule municipality; and

WHEREAS, the system of administrative adjudication means the adjudication of any violation designated in articles of chapters of the Code of Ordinances in the City of Wheaton, except for (i) proceedings not within the statutory or home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code or similar offense that is a traffic regulation governing the movement or standing of vehicles where such violation is a reportable offense under 6-204 of the Illinois Vehicle Code; and

WHEREAS, the purpose of this Article X is to provide a method for the fair and efficient enforcement of the City's municipal ordinances; and

WHEREAS, alleged violations adjudicated pursuant to this Article X shall be civil and not criminal violations; and

WHEREAS, this ordinance is adopted in full conformance with the Illinois and Federal constitutions, Illinois state statute and the home rule authority of the City of Wheaton.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that Chapter 2, "Administration" of the Code of Ordinances of the City of Wheaton, is hereby amended by the addition of an Article X, to be entitled "Administrative Adjudication" Sections 2-575 through 2-590, which shall read as follows:

SECTION 1:

Article X. System of Administrative Adjudications

Sec. 2-575. Establishment.

Pursuant to the authority conferred by Section 1-2.1-1 et seq., of the Illinois Municipal Code, the Illinois Constitution, and the City's home rule authority, the City hereby establishes a system of administrative adjudication for the charges of municipal code violations to be administered as set forth in this ordinance. The City hereby adopts 1-2.1-1 et seq., of the Illinois Municipal Code as may be amended from time to time. In the event of conflict between said

statutes and this Article, this Article shall prevail. The adoption of this Article does not preclude the City from using other lawful methods, which are hereby fully reserved, to enforce any applicable provision of the City code. The system of administrative adjudication shall function as an administrative and code hearing department and shall have the power to enforce compliance with all municipal ordinances set forth in Section 2-577 of this Article X and which shall be under the authority of the Administrative Department of the City of Wheaton.

Sec. 2-576. Jurisdiction and function.

The system of administrative adjudication established herein shall have the authority to: (i) establish procedural rules and regulations consistent with due process; (ii) administer code adjudications as set forth in this Article for alleged violations of the City's municipal code prosecutable under this Article; (iii) adjudicate such allegations; and (iv) impose penalties and orders of compliance with all municipal ordinance violations subject to the system's jurisdiction. Municipal ordinance violations under this code shall not only include those in existence at the time of the adoption of this ordinance but shall also include ordinances identified in this Article, as may be amended from time to time, and new ordinances in the Chapters set forth in Section 2-577 of this Article which may be adopted after the adoption of this Article.

Sec. 2-577. Municipal ordinances subject to adjudication.

Municipal ordinance violations subject to adjudication under this Article may include violations of any of the following Wheaton City Code provisions:

- Chapter 6, Alcoholic Beverages, Article IV
- Chapter 10, Amusements and Entertainments, Articles I-IV and VI
- Chapter 14, Animals, Articles I-IV
- Chapter 22, Buildings and Building Regulations, Articles I-XVII
- Chapter 26, Businesses, Articles I-VII and Article X
- Chapter 30, Fire Prevention and Protection, Articles I, IV, VI, and VII
- Chapter 34, Stormwater Management Regulations, Article V
- Chapter 36, Health and Sanitation, Section 36-30(b)
- Chapter 42, Offenses and Miscellaneous Provisions, Articles I-IV
- Chapter 46, Peddlers and Solicitation, Articles I-VI
- Chapter 54, Solid Waste, Article I, III, and IV
- Chapter 58, Street, Sidewalks, and Other Public Places, Article I-VII
- Chapter 70, Traffic and Vehicles, Article I-VII
- Chapter 74, Utilities, Articles I-V
- Chapter 78, Vegetation, Articles I-IV

Wheaton Zoning Ordinance (Performance Standards) as follows:

- Article III, Zoning District and General Regulations
- Article IV, Scope of Regulations
- Article VI, Landscape Requirements
- Article VII, R-1 Residential District

Article VIII, R-2 Residential District
Article IX, R-3 Residential District
Article X, R-4 Residential District
Article XI, R-5 Residential District
Article XII, R-6 Residential District
Article XIII, R-7 Residential District
Article XIV, I-1 and I-2 Institutional District
Article XV, O-R Office and Research District
Article XVI, C-1 Local Business District
Article XVII, C-2 Retail Core Business District
Article XVIII, C-3 General Business District
Article XIX, C-4 CBD Perimeter Commercial District
Article XX, C-5 Planned Commercial District
Article XXI, M-1 Manufacturing District
Article XXII, Off-Street Parking and Loading
Article XXIII, Signs
Article XXIV, Accessory Uses and Home Occupations
Article XXV, Performance Standards

Violations of ordinances governing the standing, parking, or condition of vehicles, excluding those reportable under Section 6-204 of the Illinois Motor Vehicle Code. For purposes of this ordinance when the phrase “building code” is used it shall include Chapters 6, 22, 26, 30, 34, and 36 of the Code of Ordinances of the City of Wheaton as well as all Zoning Ordinance performance standards set forth above.

Sec. 2-578. Administrative composition.

The system of administrative adjudication of the City shall be comprised of a hearing officer, or substitute hearing officer and may include any one or more of the following: a system of administrative adjudication administrator, and hearing room personnel. All members of the system of administrative adjudication shall be appointed by the City Manager and shall have the powers, authority, and limitations as are herein set forth.

- (a) Powers of the hearing officer. The term “hearing officer” means a person or persons, other than a City law enforcement officer, or City building or fire inspector, who shall have all the powers granted to hearing officers under state law set forth in Section 1-2.1-4 of the Illinois Municipal Code, as amended, the provisions of which are incorporated herein by this reference, including the power to:
 - (1) Preside at an administrative hearing called to determine whether or not a code violation exists.
 - (2) Hear testimony and accept evidence from all interested persons relevant to the existence of a code violation.

- (3) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
 - (4) Issue and file a written finding, decision, and other order stating: whether a code violation exists; the penalty and action with which the person found liable must comply.
 - (5) The hearing officer shall not have the authority to impose a penalty of incarceration. The actions that may be imposed by the hearing officer upon a finding of a code violation include:
 - (i) Compliance with or remediation of the condition that resulted in the finding of the violation.
 - (ii) Monetary penalty; or
 - (iii) Community Service.
- (b) Powers of the system of administrative adjudication administrator. The system of administrative adjudication administrator shall be empowered and is authorized and directed to:
- (1) Operate and manage the system of administrative adjudication of the City in conformance with the system's regulations, fundamental due process of the law, and as directed by ordinance.
 - (2) Promulgate internal rules and regulations reasonably required to operate and maintain the system of administrative adjudication.
 - (3) Provide the City's municipal corporate counsel with the aforesaid rules and regulations and modify them in conformance with the direction of the City's corporate counsel to be consistent with fundamental due process.
 - (4) Supervise the distribution and processing of notices as may be required under this Article to carry out its purposes.
 - (5) Supervise the collection of monies paid and/or penalties assessed after a final determination of liability.
 - (6) Compromise or otherwise settle violation notices prior to a hearing date. However, any such compromise should be made of record by the system of administrative adjudication administrator on the date the violation

notice was scheduled to appear for hearing, with an explanation by the system of administrative adjudication administrator as to the reasons for such compromise.

(7) Pursue all post-judgement remedies available by law.

(8) Manage the operations of the system including, but not limited to:

- (i) Input of ordinance violation notice information;
- (ii) Establishment and service of notice dates and hearing dates;
- (iii) Recordation of findings of liability or no liability by the hearing officer including where applicable the imposition of penalty assessment and payments;
- (iv) Issue hearing dates where continuances are sought and granted;
- (v) Keep an accurate record of appearances and failures to appear at the administrative hearings;
- (vi) Keep a record of pleas entered, judgements entered, penalties imposed, if any, and penalties paid or completed;
- (vii) Collection of unpaid penalties and pursuit of all post-judgement remedies available by law;
- (viii) Provision of payment receipts;
- (ix) Perform such other duties as directed by the City Manager; and
- (x) Perform such other duties as are necessitated to achieve functionality and efficiency in the operation of the system of administrative adjudication.

Sec. 2-579. Hearing officer qualifications.

All hearing officers shall be appointed by the City Manager meeting the following mandatory qualifications:

- (a) Successful completion of a formal training program required by 65 ILCS 5/1-21-4(c) which includes:

- (1) Instruction on the rules of procedure of the hearings they will conduct;
and
 - (2) Orientation to the subject area of the code violations they will
administrate; and
 - (3) Observation of other administrative hearings conducted by municipalities
with existing code enforcement departments; and
 - (4) Participation in hypothetical cases including ruling on evidence and
issuing finding final orders.
- (b) Every hearing officer shall be an attorney licensed to practice law in the State of Illinois for a minimum of three (3) years prior to the hearing officer's appointment; and
- (c) All hearing officers appointed by the City Manager shall be pre-qualified. This appointment shall not be subject to collateral attack in an adjudicative hearing.

Sec. 2-580. Hearing procedures not exclusive.

This Article does not preclude the City from using any other methods or legal proceeding to enforce the provisions of its codes.

Sec. 2-581. Code enforcement procedure.

The system of administrative adjudication of municipal code violations shall be conducted in accordance with the following procedures to assure defendants are afforded due process of law:

- (a) Any individual authorized to issue an ordinance/code violation notice, including but not limited to full-time police officers, community service officers, code enforcement officers, code inspectors, persons retained by the City pursuant to a contract to perform ordinance/code enforcement or inspection related services, or other individual who is an employee of the City who finds a code violation shall note the violation on a multiple copy violation notice in report form or a computer generated violation notice that shall include the following:
 - (1) The name and address, if known, of the party alleged to have violated the ordinance/code;
 - (2) A brief description of the type and nature of the alleged violation;
 - (3) The date, time, and place of the alleged violation;
 - (4) The names of witnesses to the alleged violation;

- (5) The penalty which may be assessed;
 - (6) The name, signature, position, and any identification number of the person issuing the notice;
 - (7) The date, time, and location of the adjudication hearing for the alleged ordinance/code violation; and
 - (8) The legal authority and jurisdiction under which the hearing is to be held and the penalties for failure to appear.
- (b) The correctness of the facts contained in any ordinance/code violation notice shall be verified by the person issuing the notice by:
- (1) Signing his/her name to the notice at the time of issuance; or
 - (2) In the case of a notice being produced by a computer, signing a single certificate to be kept by the administrative adjudication administrator attesting to the correctness of all notices produced by the computer while under their control.
- (c) The docketing and service of violation notices shall be made in the following manner:
- (1) The violation report form shall be forwarded to the system of administrative adjudications 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.
 - (2) Whether the violation requires an appearance at hearing or may be prepaid without an appearance.
 - (3) If a hearing date is required, it shall not be less than 30 days after the violation is reported.
 - (4) One copy of the violation report form shall be maintained in the files of the system of administrative adjudication and shall be part of the record of hearing.
 - (5) One copy of the report form shall be returned to the individual representing the City in the case so that evidence may be prepared for presentation of the code violation at the hearing on the date indicated.

- (6) One copy of the report form shall be served by first class mail to the alleged violator along with a summons demanding the alleged violator appear at the hearing unless the alleged violator has been personally served with the notice of violation as an alternative to first class mail notice.
- (7) In the case of a building code or fire code violation only, if the City has an ordinance requiring property owner(s) compliance, service may be made personally on the owner or by mailing the report and summons to the property owner's address available to the City by routine address searches. The term "property owner(s)" as used in this provision means the legal or beneficial owner of the property.
- (8) In the case of a building code or fire code violation only, if the name of the property owner cannot be ascertained or if service on the owner cannot be made by personal service or mail, service may be made on the owner by posting or affixing a copy of the violation or form on the front door of the structure where the violation is found, not less than 20 days before the hearing is scheduled.
- (9) Any ordinance violation notice or copy of the notice issued, signed and served in accordance herewith shall be prima facie correct and prima facie evidence of the correctness of the facts shown on the notice and shall be admissible in a subsequent administrative or legal hearing.

Sec. 2-582. Retaliation against Witnesses or Complainants prohibited.

No action for eviction, forcible entry and detainer, or other similar proceeding shall be threatened or instituted against a witness or complainant unless their complaint is false and made in bad faith.

Sec. 2-583. Subpoenas.

At any time prior to a hearing date, a hearing officer may issue a subpoena at the request of either party directing witnesses to appear and give testimony at the hearing. All costs associated with a subpoena shall be prepaid by the requesting party and shall include the cost of serving the subpoena and witness fees equal to the fee that would be provided a subpoenaed witness in a civil case if the Code of Illinois Civil Procedure was applicable.

Sec. 2-584. Representation at hearings.

The case for the City may be presented by an attorney designated by the City Manager or by any other City employee, except the case for the City shall not be presented by an employee assigned to the system of administrative adjudication. The case for the alleged violator may be presented by the alleged violator, their attorney, or any other agent or representative authorized to represent the alleged violator under law. Corporations,

partnerships and limited liability companies shall be represented by an attorney (705 ILCS 220/1).

Sec. 2-585. Administrative hearings.

An administrative hearing shall be held to adjudicate an alleged ordinance/code violation on its merits, or to contest the validity of a violation notice. Specifically, a hearing shall be held to adjudicate alleged violations of all ordinance/code sections except those that are excluded by law from the City's administrative adjudication system:

- (a) Hearing time and date; Limited Continuances: Hearings for all must appear and contested allegations of violation shall be held on the date, time, and place as set forth in the violation notice issued served. No continuances shall be authorized by the hearing officer in proceedings under this section, 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. Any authorized continuance by a hearing officer under this section shall not be beyond the next routinely scheduled date for administrative hearings.
- (b) Strict rules of evidence inapplicable: With regard to testimony heard and evidence presented, the strict rules of evidence applicable in judicial proceedings shall not apply to hearings authorized by this section subject to the condition that hearsay shall be admissible if it is the type of hearsay that would be relied upon by people in the normal experience of their daily lives.
- (c) Defenses to building and code and life safety code violations: In the cases of building code and life safety code violations only, the only defenses to the allegation of a violation shall be:
 - (1) That the violation did not exist;
 - (2) The code violation has been caused by current non owner occupants of a property and that in spite of the owner's efforts to keep the property free of such violations the current occupants continue to cause the code violations;
 - (3) The occupant or resident of the dwelling has refused entry to the owner or its agent for purposes of correcting the building code violation;
 - (4) In the case where the hearing officer finds the defense set forth in subparagraph 2 and 3 above, such finding shall authorize the issuance of notices of violation against the occupants of the property who

upon the finding of violation shall become liable for any penalties, compliance or action order that can be entered by the hearing officer.

(d) Default.

- (1) If on the date set for hearing, an alleged violator, their attorney of record or designee, fails to appear, the hearing officer may find the alleged violator in default and proceed with the hearing, accept evidence, and make a finding with regard to the existence of the code violation.
- (2) The hearing officer upon a finding of a violation may impose any authorized penalty and compliance for building, fire, and life safety codes.
- (3) Upon entry of a default finding and penalty, the system of administrative adjudications administrator shall send, or cause to be sent, notices by first class mail, postage prepaid to the person who received the notice of the ordinance violation. Service of notices in accordance with this Article shall be complete as of the date of the deposit of the notice in the United States mail.
- (4) A default judgement constitutes a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law 735 ILCS 5/3-101, et seq.

(e) Findings, Decision and Order.

- (1) Upon completion of the hearing, the hearing officer shall make a determination on the basis of the presented evidence as to whether or not a code violation existed or exists.
- (2) The determination shall be made in writing and shall be designated as findings, decision, and order. Such determination shall constitute a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law, 735 ILCS 5/3-101, et seq.
- (3) The findings, decision and order shall include:
 - (i) The hearing officer's findings of fact.
 - (ii) The decision as to whether or not a code violation exists based upon the findings of fact.

(iii) The entry of a penalty, compliance or action order, or if a code violation is not proven: dismissal.

(4) A copy of the findings, decisions or order shall be served on the violator by first class U.S. mail within five (5) days after its issued. Service shall be complete as to the date of the deposit of the first-class mail in the United States mail.

Sec. 2-586. Order and sanction attached to property.

In the case of a Chapter 22, Buildings and Building Regulations, Articles I-XVII or Chapter 30, Fire Prevention and Protection, Articles I, IV, VI, and VII violation, the order to correct the violation, and sanctions imposed by the hearing officer as a result of a finding of a violation, shall attach to the property as well as the property owner so that a finding of a violation against one owner cannot be avoided by conveying or transferring the property to another. Any subsequent transferee or owner of the property takes subject to the findings, decision, and order of the hearing officer.

Sec. 2-587. Administrative review

The findings, decision, and order of the hearing officer shall be subject to the Administrative Review Law, as amended (735 ILCS 5/3-101, et seq.) which shall apply to and govern in every action for the judicial review of the findings, decision, and order of the hearing officer.

Sec. 2-588. Penalties and judgement collection procedure.

(a) Where a finding of a violation is found for any provision prosecuted under this Article the following penalties may be imposed.

(1) A penalty of not less than \$100.00, nor more than \$950.00, for each day the violation exists;

(2) Remediation;

(3) Community Service.

(b) If a violator has remediated a condition at the time of the adjudicative proceeding but is found in violation of the section at the time the citation was issued, the hearing officer shall impose a minimum penalty of Twenty dollars (\$20.00), unless the issuer of the ordinance/code violation by and through the administrative adjudication administrator, requests dismissal of the matter, before the adjudicative proceeding hearing date.

- (c) All penalties shall be paid no later than 28 days after imposition by the hearing officer.
- (d) Any penalty, or other sanction imposed remaining unpaid after the exhaustion of, or failure to exhaust, judicial review procedures under Administrative Review Law (735 ILCS 5/3-101, et seq.) shall be a debt due and owing the City collectible in accordance with applicable law.
- (e) After expiration of the period within which judicial review under the Administrative Review Law (735 ILCS 5/3-101, et seq) may be sought for a final determination of a code violation, the City may commence a proceeding in the Eighteenth Judicial Circuit Court for purposes of obtaining a judgement on the findings, decision, and order. The City may consolidate multiple findings, decisions, and orders against a person in such proceeding. The determination of whether the City should commence a proceeding for purposes of obtaining a judgement for the findings, decision and orders shall be determined in the discretion of the City Manager.
- (f) Upon commencement of the action, the City shall file certified copies of the findings, decision, and order, as well as a certificate reciting sufficient facts to show the determination of the findings, decision and order was entered in accordance with this Article and applicable municipal ordinances.
- (g) Service of the summons and a copy of the petition may be by any method allowed by Illinois law provided that the total amount of the penalty imposed by the determination, findings, decision, and order does not exceed Fifty Thousand dollars (\$50,000.00), 625 ILCS 5-1-2.1-4(b)5.
- (h) The court may also issue any other orders, including injunctions, to enforce the order of the hearing officer to correct the code violation.

Sec. 2-589. Bond remediation.

The hearing officer may impose a bond on a violator as a condition of compliance remediation.

Sec. 2-590. Prepayment before adjudicative hearing.

- (a) The following violations are eligible for prepayment, where the charging individual writing the citation for the ordinance violation checks a box on the citation indicating that the offense may be prepaid, absolving the violator with the need to appear:

Pay by Mail
Chapter 6 section 6-6 underage consumption
Chapter 6 section 6-7 parent responsible
Chapter 6 section 6-8 resp. of owner or occupant
Chapter 6 section 6-11 caterers
Chapter 14 Art II; IV; VI
Chapter 26, Art V, Sec 26-138
Chapter 30, Art I
Chapter 36 except for 36-30 (b)
Chapter 42-1 (Class C or petty)
Chapter 42-8, 42-9, 42-10, 42-11, 42-12, 42-16, 42-17, 42-18, 42-19, 42-20, 42-21, 42-25, 42-28, 42-30, 42-31, 42-32, 42-33, 42-106
Chapter 46
Chapter 54 with the exception of 54-45
Chapter 58, sec 58-12, 58-14, 58-15, 58-19, 58-22, 58-23, 58-25, 58-26, 58-27, 58-31, 58-32, 58-33, Art VI
Chapter 70 as qualified below
Chapter 78

- (b) Except for handicap parking violations, violations of Chapter 70 may be prepaid at a rate of \$30.00 per violation. Singular handicap parking violations in a twelve-month period may be prepaid without appearance at a rate of \$350.00. Multiple handicap parking violations in a twelve-month period shall be a must appear.
- (c) All other chapters eligible for prepayment may be prepaid at a rate of \$75.00 per violation.

- (d) The payment for a violation eligible for prepayment must be received within 15 calendar days of citation issuance. Failure to receive payment within the 15-day time frame will result in the violation being routed to an administrative hearing.

SECTION 2: That should any clause, sentence, paragraph or part of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

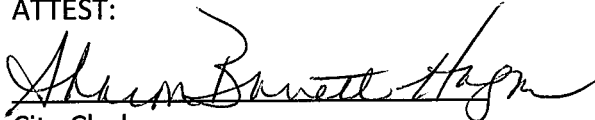
SECTION 3: In all other respects, the terms and provisions of the Wheaton City Code are ratified and remain in full force and effect.

SECTION 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

SECTION 5: That this ordinance shall be in full force and effect commencing this 7th day of June 2021, and upon publication in accordance with the law.


Mayor

ATTEST:


City Clerk

Aye:

Roll Call Vote:

Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilwoman Fitch
Councilwoman Robbins
Councilman Weller
Councilman Barbier

Nay:

None

Absent:

None

Motion Carried Unanimously

Passed: June 7, 2021

Published: June 8, 2021