

**ORDINANCE # 2004- 28**

**AN ORDINANCE OF THE KENDALL COUNTY CODE CREATING A CODE HEARING UNIT**

WHEREAS, Kendall County has adopted rules and regulations intended to protect and enhance the public health, safety, and welfare, and these rules and regulations are set forth in the Kendall County Code; and

WHEREAS, enforcement of the rules and regulations of the Kendall County Code sometimes requires County staff to notify a property owner or other person of a violation of the duly adopted rules and regulations; and

WHEREAS, failure by a property owner or other person to correct an identified violation of the Kendall County Code currently requires staff to take further action through the circuit court; and

WHEREAS, it is desirable to have an alternative procedure for the abatement of Kendall County Code violations which is less complex and less time consuming; and

WHEREAS, Chapter 55, Section 5/5-41 of the Illinois State Statutes allows counties to create Code Hearing Units for the administrative adjudication of code violations; and

WHEREAS, Kendall County staff and the Kendall County State's Attorney have reviewed the enabling legislation and have drafted rules, regulations and procedures for a Code Hearing Unit for Kendall County, attached hereto as Exhibit "A"; and

WHEREAS, the Planning, Building and Zoning Committee of the Kendall County Board has reviewed the drafted rules, regulations and procedures for the Code Hearing Unit and has determined that such a Unit will expedite the adjudication of Code violations and improve the administration of the Kendall County Code, and has forwarded a recommendation to the County Board that a Code Hearing Unit be created for Kendall County; and

WHEREAS, the County Board of Kendall County has determined that it is in the best interest of its citizens of the County to amend the Kendall County Code to establish the Code Hearing Unit in order to better protect the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

SECTION ONE: The conclusions set forth above and the recommendation of the Planning, Building and Zoning Committee of the Kendall County Board are hereby adopted as the conclusions of the Kendall County Board.

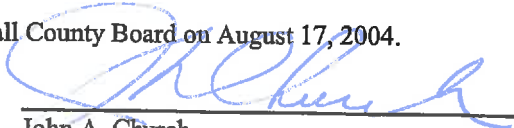
SECTION TWO: The Kendall County Code is hereby amended to create a Code Hearing Unit, as set forth in Exhibit "A" attached hereto.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the County Board of Kendall County, Illinois.

IN WITNESS OF, this Ordinance was approved by the Kendall County Board on August 17, 2004.

  
\_\_\_\_\_

Attest:

  
\_\_\_\_\_

John A. Church  
Kendall County Board Chairman

Paul Anderson  
Kendall County Clerk

## EXHIBIT "A"

### CODE HEARING UNIT

#### Section 1. Definitions

- a) "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 including improvements; sanitation practices; or subdivision zoning.
- b) "Code Enforcement Officer" means a County employee or independent contractor or investigator authorized to issue citations for County Code violations.
- c) "Hearing Officer" means a person other than a Code Enforcement Officer or law enforcement officer having the following powers and duties:
  - 1) To preside at an administrative hearing called to determine whether a Code violation exists;
  - 2) To hear testimony and accept evidence from the Code Enforcement Officer, the respondent, and all interested parties relevant to the existence of a Code violation;
  - 3) To preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
  - 4) To issue and sign written findings and a decision and order stating whether a Code violation exists;
  - 5) To impose penalties consistent with applicable Code provisions 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.
- c) "Property owner" means the legal or beneficial owner of an improved or unimproved parcel of real estate.
- d) "Respondent" means a property owner, waste hauler, or other person charged with liability for an alleged Code violation and the person to whom the notice of violation is directed.
- e) "Solid waste" means demolition materials, food and industrial processing wastes, garden trash, land cleaning waste, mixed refuse, non-combustible refuse, and trash as defined in the Illinois Solid Waste Disposal District Act.
- f) "Waste hauler" means any person owning or controlling any vehicle used to carry or transport garbage, refuse, or other forms of solid waste.

**Section 2. Code Hearing Unit – Establishment and Jurisdiction.**

There is hereby established a Code Hearing Unit as a division of the County Planning 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 Kendall County Code, except those pre-empted by State law or County ordinance.

**Section 3. Hearing Officer – Appointment.**

The Chairman of the County Board, with the advice and consent of the County Board, shall appoint one or more Hearing Officers for the purposes of this Section. A Hearing Officer may not be a Code Enforcement Officer or other law enforcement officer.

**Section 4. Hearing Officer – Powers and Duties.**

The Hearing Officer shall have the following powers and duties:

- a) All powers and duties set forth in Section 2, above.
- b) The authority to call and preside at conferences for the settlement or simplification of issues.
- c) The power to administer oaths and affirmations.
- d) The authority to rule on motions, objections and the admissibility of evidence.
- e) Subject to the provisions of this Section, the authority to subpoena relevant witnesses and the production of relevant documents, records or other information.
- f) The authority to exercise all powers and duties necessary and proper to the administration of fair hearings.

**Section 5. Code Enforcement Officers – Appointment.**

The County Planning, Building, and Zoning Director and County Environmental Health Director (or their designees) are hereby authorized to serve as County Code Enforcement Officers. In the event that the County Planning, Building, and Zoning Director or the County Environmental Health Director positions are vacant, the County Administrator shall appoint an interim Code Enforcement Officer.

**Section 6. Instituting Administrative Adjudication Proceedings.**

- a) Any Code Enforcement Officer or designee of the County may institute an administrative adjudication proceeding with the Code Hearing Unit by forwarding a copy of the complaint and all relevant supporting materials to the Code Hearing Unit.
- b) When a Code Enforcement Officer observes a Code violation, the Officer may file a formal complaint by noting the violations on a violation notice and report on a form approved by the Code Hearing Unit.
- c) The written complaint shall contain, at a minimum, facts sufficient to inform the respondent of the violations alleged, including the order allegedly violated.

- d) The violation notice and report form shall contain a file number and a hearing date noted by the Code Enforcement Officer in the blank spaces provided for that purpose on the form. The violation notice and report shall state that failure to appear at the hearing on the date indicated may result in determination of liability for the cited violation and the imposition of fines and assessment of costs as provided by the applicable County ordinance. The violation notice and report shall also state that upon a determination of liability and the exhaustion of or failure to exhaust procedures for judicial review, any unpaid fines or costs imposed will constitute a debt due and owed to the County.
- e) A copy of the violation notice and report form shall be served on the respondent either personally or by certified mail with return receipt, 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 twenty (20) days before the hearing is scheduled, a copy of the violation notice and report form in a prominent place on the property where the violation is found.

#### **Section 7. Subpoenas.**

- 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, the Hearing Officer 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.

#### **Section 8. Representation At Hearings.**

The case for the County may be presented by a Code Enforcement Officer or by the State's Attorney or his/her designee. 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, manager, or supervisor of the corporation.

#### **Section 9. Hearing Procedure.**

- a) The Hearing Officer will begin the Officer's call by introducing himself or herself to the respondents and other attendees. Opening remarks should include informing the citizens as to the nature and manner of the proceedings. Opening remarks may include information about the order that cases will be called, the need to maintain proper decorum, continuances, acceptable and unacceptable defenses, and the fees and range of potential fines.
- b) The Hearing Officer may grant continuances only upon a finding of good cause. Continuances shall not be granted as a matter of course.
- c) All testimony shall be given under oath or affirmation.
- d) 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.

- e) The record of all hearings before the Hearing Officer shall include: all documents admitted into evidence at the hearing; a copy of the notice of violation and hearing; and a copy of the findings and decision of the Hearing Officer.
- f) The record of a hearing before the Hearing Officer may include a record of the testimony presented at the hearing, which may be by means of a tape recording, transcription or other appropriate means. The Code Hearing Unit shall not be responsible for providing recording services or equipment. Any party desiring to record the testimony presented at the hearing shall provide its own court reporter, transcriber, or recorders at that party's own expense regardless of the decision of the Hearing Officer. The Hearing Officer may reasonably limit where the court reporter, transcriber, or recorder may be placed in the hearing room.

**Section 10. 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. The Code Enforcement Officer's signed violation notice and report form shall be prima facie evidence of the existence of the Code violation described in the form. The strict rules of evidence applicable to judicial proceedings do not apply to hearings authorized under this Section. The Hearing Officer can take notice of all orders and regulations enacted by Kendall County.

**Section 11. Findings, Decision, and Order.**

At the conclusion of the hearing or any reasonable time thereafter, 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 or other penalty, directing the respondent to correct the violation, or dismissing the case if the violation is not proved. If the Hearing Officer determines that the respondent is liable for the cited violation, the Hearing Officer shall enter an order imposing sanctions that are provided in the Code for the violations proved, including the imposition of fines and the recovery of the costs of the proceedings. 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 service or by any method provided for service of the violation notice and report form under Section 6. 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 Section.

**Section 12. Payment of Penalties, Fines and Costs.**

All fines and other monies paid to Kendall County in accordance with this Article shall be remitted to the Kendall County Treasurer. In order to ensure that Code violations are remedied or fines are paid in a timely manner, the Hearing Officer, upon issuing a final determination of liability, may further require a respondent found to be in violation to post with the County a compliance bond or, as appropriate, to consent to the granting and recording of a lien against property (per 55 ILCS 5/5-41050). Bonds and liens shall be approved by the State's Attorney as to form. Whenever it is necessary for the County to make repairs or otherwise expend funds to mitigate a Code violation for which a bond was posted, or whenever fines or costs remain unpaid after a respondent has exhausted or failed to exhaust judicial review procedures, the Hearing Officer may, after giving the respondent notice and an opportunity to be heard, issue an order permitting the County to draw against the bond in an appropriate amount, or to foreclose the lien. The Hearing Officer shall order the bond or the property or proceeds from the property, less the

costs incurred by the County, returned to the respondent upon proof of compliance with the applicable Code provisions and the payment of the assessed fines or costs.

**Section 13. Violation of Findings, Decision and Order.**

Any respondent, having received notice and an opportunity for a hearing as provided in this Article, who fails to subsequently comply with the findings, decision and order of the Hearing Officer, including failure to respond to 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 of not less than \$200.00 and not more than \$500.00 for each offense, with each day that the violation continues being considered a separate and distinct offense. In a prosecution under this Article, it shall not be a defense that a person came into compliance with an order, sought judicial review of the order, or made efforts to comply with an order subsequent to its effective date.

**Section 14. Election of Remedies.**

In no case may the Code Hearing Unit conduct an administrative adjudication proceeding for alleged violations of the Code where the requested remedy is a punishment of imprisonment. However, the provisions of this Article shall not preclude the County from seeking the remedy of imprisonment in a court of law, including imprisonment for failure to comply with the order of the Hearing Officer.

**Section 15. Administrative Hearing Not Exclusive.**

Notwithstanding any other provisions of this Article, neither the authority of the Code Hearing Unit to conduct administrative adjudication procedures nor the institution of such procedures under this Article shall preclude the County from seeking remedies for Code violations through the use of any other administrative procedure or court proceeding.

**Section 16. Administrative Review.**

The findings, decision and order of the Hearing Officer shall be subject to review in the Circuit Court of the County. The Administrative Review Law 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 the Hearing Officer. Where the Circuit Court upholds the findings, decision and order of the Hearing Officer following administrative review, the County may request and the Circuit Court may require that the respondent pay all costs incurred by the County in the administrative review process.

**Section 17. Sanctions, Transfer or Conveyance of Property.**

The order to correct a Code violation and the sanctions imposed by a County against a respondent property owner as the result of a findings or a Code violation under this Section 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 the Hearing Officer under this Section 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.

**Section 18. Collection of Unpaid Fines or Other Sanctions.**

- a) Any fine or other sanction or costs imposed, or any part of any fine or other sanction or costs imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the State Administrative Review Law is 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 11, above.
- b) 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 Circuit Court of the County for purposes of obtaining a judgment on the Hearing Officer's findings, decision and order. Nothing in this Section prevents the County from consolidating multiple findings, decisions and orders against a person or property in such a proceeding.
- c) Upon commencement of the action, the County 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 were issued in accordance with State Statutes (55 ILCS 5/5-41005 to 41060) and this Article. 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 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 \$5,000.00.
- d) If the court is satisfied that the findings, decision and order were entered within the requirements of the applicable State Statute and this Article and that the respondent had an opportunity for a hearing under this Article and for judicial review as provided in this Article:
  - 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.