Journal of the National Association of Administrative Law Judiciary

Volume 18 | Issue 1 Article 5

3-15-1998

The Department of Administrative Hearings for the City of Chicago: A New Method of Municipal Code Enforcement,

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THE DEPARTMENT OF ADMINISTRATIVE HEARINGS FOR THE CITY OF CHICAGO: A NEW METHOD OF MUNICIPAL CODE ENFORCEMENT

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I. INTRODUCTION

On January 1, 1997, Chicago's Department of Administrative Hearings began operations. The department and its 84 administrative law officers (ALOs) handle approximately 30,000 cases each month over five separate divisions: Vehicle (parking); Buildings; Environmental Safety (health and sanitation); Consumer Affairs and a "catch-all" division, Municipal.

The department originated as an initiative from Mayor Richard M. Daley, who, in October 1995 appointed a special commission to examine and study the potential for an administrative hearings department. Several reasons prompted the city to consider the issue, foremost among them to increase compliance with the City of Chicago Municipal Code. Among the other goals set for the department were: to reduce congestion in the Cook County Circuit Court; to expedite municipal prosecutions; to reduce litigation costs; and to free code enforcement officers from court attendance. In each of these respects, the department is considered a clear success, and is at the national forefront on the issue of municipal administrative adjudication. This article examines the history of the department and its operational procedures, changes in Illinois state law to facilitate the administrative hearing process, how hearings are conducted, and the role of the ALO.

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Note: On April 1, 1998 the City introduced a bill in the City Council which would amend the ordinance. Therefore, some provisions and section numbers noted in this article may be subject to change.

Both the concept and design of the Chicago Department of Administrative Hearings provide the court system with breathing room, and allow persons charged with ordinance violations to have access to a process that is less intimidating and more efficient than going to court. Eventually, the city envisions that virtually all violations of the municipal code which do not carry a sentence of imprisonment (subject to certain specific exceptions) will come under the jurisdiction of the Department of Administrative Hearings.

The single most essential feature of the Chicago process is the separation of enforcement and adjudicative functions. Under the administrative hearing system, the city agency that issues a notice of violation is not the city agency that hears the case. Instead, the Department of Administrative Hearings holds a hearing and issues a final, binding decision, thereby promoting fairness and confidence in the system for all concerned.

II. THE HISTORY AND BACKGROUND OF THE DEPARTMENT OF ADMINISTRATIVE HEARINGS

1) The Administrative Hearing System Pre-1997

In calendar year 1995, the city prosecuted approximately 145,000 cases in Cook County Circuit Court alleging a violation of the municipal code. These violations encompassed 120 different ordinance provisions enforced by 11 different departments, such as license, zoning, health code, environmental and public nuisance violations. In each case, the city was represented by a city attorney, and in nearly every case, the city also had to call to testify at least one witness, such as a police officer, inspector, or other city employee.

Prior to the creation of the Department of Administrative Hearings, several city departments and commissions conducted their own administrative hearings. The Illinois Supreme Court's decision in *Paper Supply Co. v. City of Chicago*, 57 Ill.2d. 553, 317 N.E.2d 3 (1975) affirmed the authority of local home rule governments to use administrative hearings to enforce ordinances containing civil penalties.[1] Hearings were spread across city departments: The

[1] In Paper Supply, the ordinance at issue was Chicago's employment tax. The ordinance conferred on the director of revenue the power to make an administrative finding of fact that a delinquency in paying the tax was or was not the fault of the defendant employer. The Court held that "[s]uch factual determinations by administrative agencies or officials are

Department of Revenue held hearings for parking violations, tax matters, vehicle impoundment, and false alarms; the Department of Buildings held enforcement hearings under the building code; the Department of Streets and Sanitation held hearings for violations involving solid waste, nuisance, forestry and posting of bills ordinances; the Police Department held hearings relating to towed vehicles; the Department of Consumer Services held hearings under consumer fraud and taxicab regulatory ordinances; and the Department of Transportation held hearings on newsstand permits and removals[to name just a few of the departments that conducted hearings]. In 1995, city departments conducted over 250,000 administrative hearings, employing 75 part-time ALOs and 45 other employees whose responsibilities related to administrative hearings. Now, the Department of Administrative Hearings essentially puts most city departments "out of the hearing business," and provides a separation between the department that issues a notice of violation and the department that adjudicates the matter.

Under previous state law, Chicago and other Illinois cities could only enforce an administrative judgment within the borders of the city and without the aid of other units of government. As a result, the only type of judgment that truly carried any weight was one against the holder of a city license. If such a licensee ignored an administrative judgment, its license was put at risk. As to all other violators, Chicago's home rule power under state law did not permit the city to require the courts to recognize such judgments as enforceable. As a result, many city departments bypassed the administrative hearing process, requiring cases to be sent to the overburdened Cook County Circuit Court.

Also, an obvious result of the previous system/administrative hearing process wherein of several different departments conducted separate hearings was disparate regulation. Notice periods, rules of procedure, qualifications for hearing officers and use of automation and computer technology varied greatly from department to department.

On one issue, however, all the departments agreed: The Cook County Circuit Court was too overburdened to handle the large number of civil municipal code cases, and as a result, quality of life issues in the

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authorized in countless statutes and ordinances, and the provision results in neither an unlawful delegation of authority nor the improper exercise of a judicial function." 57 Ill.2d at 579, 317 N.E.2d at 16.

city were adversely affected. While many civil municipal code violations can generally be classified as "minor," disregard for such violations can lead to larger problems. Chicago Mayor Richard M. Daley has aggressively pursued minor civil and criminal offenses, under the "broken windows" concept that unchecked small disorders will lead to larger ones. The Department of Administrative Hearings is at the forefront of the city's mission, and is typically a citizen's first contact with a quasi-judicial process.

Prior to the initiation of the Department of Administrative Hearings, violators were typically given de minimus fines, or, if they were instructed to show future compliance, no sanction at all. Police officers as well as departmental inspectors and investigators spent large amounts of time in court waiting to testify, rather than patrolling their beat or conducting investigations. Multiple continuances were granted to defendants, increasing the cost of prosecution and delaying any actual action on the violation. Moreover, many offenders simply treated the fines simply as a cost of doing business and made no effort to come into compliance.

2) The Mayor's Special Committee on City Code Enforcement

In answer to such complaints, Mayor Richard M. Daley appointed a committee in October 1995 to review the enforcement of city ordinances and to consider: (1) whether a more uniform system of municipal code enforcement should be utilized; and (2) whether some ordinances enforced by the circuit court would perhaps best be transferred to a system of administrative hearing. The committee, officially known as the Mayor's Special Committee on City Code Enforcement, was made up of both private and public attorneys, including former Chicago Bar Association presidents Kevin Forde, Donald Hubert, Gordon B. Nash, Jr. and R. William Austin.

Over an eight-month period, the Mayor's Committee reviewed the various violations created by the municipal code, and heard the testimony of representatives from city departments, city attorneys who prosecuted municipal code violations, Cook County Circuit Court judges, and city officials who managed the administrative hearings conducted by the departments. The circuit court judges who appeared before the Mayor's Committee stated that a large portion of the municipal code cases in the judicial system could and should be heard by ALOs. As an example of the strain on the courts, in 1995, the Cook

County Circuit Court provided 11 judges to hear municipal code cases, but only two full-time. A judge sitting two days per month heard over 500 revenue cases.

Based on its study, the committee unanimously agreed in June, 1996 that most civil municipal code violations currently prosecuted in circuit court should be moved to an administrative hearing system, and that rather than having each department run its own system, all administrative hearings, with a few exceptions, should be conducted by a separate Department of Administrative Hearings within city government. The committee also noted the 1995 federal decision in which the constitutionality of the city's system for administrative adjudication of parking violations was upheld.[2]

In its final report, the committee formally recommended that the city send virtually all municipal code violations to an administrative hearing process. The committee also recognized that some types of hearings are unique and proposed that they not be included in the Department of Administrative Hearings' caseload. Specifically, the committee suggested that hearings conducted by the Mayor's Liquor License Commission, the Chicago Commission on Human Relations, the Zoning Board of Appeals, the Personnel Board, the Board of Ethics, and the Commission on Chicago Landmarks not be included.

The committee stated that a central Department of Administrative Hearings would increase efficiency by combining management, computer systems and training programs. The committee believed that a central department would also increase fairness via the adoption of common rules of procedure, and would increase the perception by the public of hearing officer impartiality since enforcement and adjudication functions would not be performed by the same department.

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[2] In Van Harken v. City of Chicago, 906 F. Supp. (1182 N.D. Ill. 1995), *aff'd as modified*, 103 F.3d 1346 (7th Cir. 1997), *cert. denied*, ___ U.S. ___, 117 S.Ct. 1846 (1997), the plaintiffs contended that Chicago's system of administrative adjudication for parking violations (conducted at the time by the department of revenue, but now a responsibility of the department of administrative hearings) deprived them of the right to a fair and impartial adjudicator and was unconstitutionally skewed against respondents. The federal district court held that the parking violations were civil in nature, and thus criminal due process protections are not the proper standard for such administrative hearings, and also that there was no basis to show that an independent contractor hearing officer was not impartial.

3) Illinois state law regarding municipal administrative hearings

In years past, Illinois law provided for administrative hearings at the municipal level only on an ad hoc basis by individual departments. The hearings allowed by the state were detailed and specific to a particular process. For instance, state law authorized such procedures as administrative adjudication of parking violations and a building code enforcement bureau for building code violations. However, there existed no state law authorizing a specific umbrella department to handle such matters. Following the report of the Mayor's Commission in June 1996, the city embarked on an ultimately successful quest for the passage of a state law authorizing municipalities to put in place a centralized process of administrative hearings. The law (65 Illinois Compiled Statutes §5/1-2.1) gives Illinois home rule cities the ability to set up a single administrative hearing department to enforce those municipal ordinances that contain civil sanctions, and it provides for code hearing units, or divisions that hear certain parts of the municipal code.

65 ILCS 5/1-2.1-2.
Administrative adjudication of municipal code violations.

> Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, except for (i) proceedings not within the statutory or the home rule authority of municipalities [e.g. criminal matters]; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under section 6-204 of the Illinois Vehicle Code.

65 ILCS 5/1-2.1-4.
Code hearing units; powers of hearing officers.

(a) An ordinance establishing a system of

> administrative adjudication, pursuant to this Division, shall provide for a code hearing unit within an existing agency or as a separate agency in the municipal government. The ordinance shall establish the jurisdiction of a code hearing unit that is consistent with this Division. The "jurisdiction" of a code hearing unit refers to the particular code violations that it may adjudicate.

State law further asserts that municipal administrative hearings must afford due process by providing respondents the opportunity to be heard, to be represented by counsel, and to request the issuance of subpoenas. A respondent has a right to obtain judicial review under the Illinois Administrative Review Act, which provides either party to an administrative hearing (thirty five) (35) days to appeal a final administrative judgment to circuit court. When a respondent does not comply with the judgment of the hearing officer, then the judgment will be considered a debt that can be enforced in accordance with applicable law.

The most significant new provision in state law regarding administrative hearings allows for the enforcement of administrative judgments. The law provides that the judgments of administrative hearing officers are enforceable to the same extent as the judgments of a court unless the losing party seeks judicial review and receives a stay from a judge. There is no longer a need to convert an administrative decision into a judgment before collection procedures can begin.

65 ILCS 5/1-2.1-8.Enforcement of judgment.

(b) After expiration of the period in which judicial review under the Illinois Administrative Review Law may be sought for a final determination of a code violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

4) The City of Chicago's ordinance

The general enabling provision of the ordinance states:

City of Chicago Municipal Code 2-14-010 Department of Administrative Hearings - Establishment and Composition.

There is hereby established an office of the municipal government to be known as the department of administrative hearings which shall be authorized to conduct administrative adjudication proceedings for departments and agencies of the city. The office shall be administered by a director, who shall be appointed by the mayor, subject to approval by the City Council, and staffed by administrative law officers and other employees as may be provided for in the annual appropriation ordinance.

The Department of Administrative Hearings' continued growth is provided for under the ordinance, and that growth certainly will occur. The department can serve as the administrative hearing arm for any city agency or body (except those specifically enumerated in subsection (c) below) if that agency or body so chooses. The Department of Administrative Hearings currently conducts hearings on such varying matters as drug and gang house cases, wage garnishment of city employees, certain tax issues, building code violations, environmental/recycling issues and tobacco sales to minors. In the near future, cases on zoning code violations, non-payment of water service and police-issued tickets (curfew, disorderly conduct, public drinking, etc.) will be added to the department's duties.

City of Chicago Municipal Code 2-14-13. Other provisions not limiting.

(a) Notwithstanding any other provision of the Municipal Code, all provisions of the code, except for those specified in Section 2-14-190(a), may be enforced by instituting an administrative adjudication proceeding

with the department of administrative hearings as provided in this chapter.

(b) Notwithstanding any other provision of the Municipal Code, any enforcement action, including but not limited to license suspension or revocation, which may be exercised by another department or agency of the city may also be exercised by the department of administrative hearings.

(c) Nothing in this chapter shall affect the jurisdiction of the Mayor's License Commission, the Chicago Commission on Human Relations, the Zoning Board of Appeals, the Personnel Board, the Board of Ethics, the Police Board, or the Commission on Chicago Landmarks.

Most importantly in terms of the future expansion, the administrative hearings department maintains a "reach-in" power, whereby it can exercise jurisdiction over the administrative hearings of any department. It is envisioned that nearly all violations of the municipal code that do not carry a sentence of imprisonment will eventually be initially heard by the Department of Administrative Hearings.

City of Chicago Municipal Code 2-14-190.
Municipal Division - Jurisdiction.

(c) Notwithstanding any other provision of this code, except section 2-14-130(c) [the seven boards and commissions listed above], the jurisdiction granted to the department of administrative hearings by this article shall be exercised exclusively by the department of administrative hearings upon written notification by the director to any affected department or agency of the city. Subsequent to the issuance of the written notification, no city department or agency, except those specified in section 2-14-130 (c), may adjudicate code provisions identified in the notice other than the department of administrative hearings.

It is anticipated that the number of cases coming before the department will increase from the 400,000 cases heard in 1998, as its jurisdiction is expanded. Of the 23 city departments and "sister agencies," ten currently utilize the Department of Administrative Hearings for at least a portion of their administrative cases.

Also, it is important to note that the city can opt out of the administrative hearing process.

City of Chicago Municipal Code 2-14-120.
Administrative adjudication procedures not exclusive.

> Notwithstanding any other provision of this chapter, neither the authority of the office of administrative hearings to conduct administrative hearings nor the institution of such procedures under this chapter shall preclude the city from seeking any remedies for code violations through the use of any other administrative procedure or court proceeding.

Any violation over which the Department of Administrative Hearings has jurisdiction can also be sent directly to circuit court by the city, thereby allowing the city a degree of discretion over particular matters. The city's practice currently is to go only to Cook County Circuit Court with a civil violation of the municipal code in very isolated cases. Those instances include: when particularly egregious violations are at issue; when the administrative hearing process has proven ineffective with a particular violator; when emergency relief such as an injunction is necessary; when incarceration is warranted; or when the accused is charged with other offenses which must be tried in circuit court.

III THE INTERNAL STRUCTURE OF THE DEPARTMENT OF ADMINISTRATIVE HEARINGS

1) The Divisions of the Department

The Department of Administrative Hearings is broken up into five separate divisions. The Vehicle Hearings Division hears parking and vehicle equipment matters, including booted vehicle violations (caused by the receipt office or more parking tickets), city wheel tax violations (failure to register vehicle with the city and affix sticker), and vehicle safety violations. These hearings were formerly handled by the

Department of Revenue. The Vehicle Hearings Division has by far the largest volume of the divisions, eclipsing 200,000 cases per year and making up between 50%-60% of the volume handled by the Department of Administrative Hearings. In 1997, over 100,000 vehicle safety violation cases were diverted from Cook County Circuit Court to the department. Due to the high volume, there is no scheduled daily docket. A person who requests a hearing is assigned a week-long period during which that person can come in for a hearing at any one of the division's four locations, between 8 a.m. and 4 p.m. Monday-Friday. Moving violations remain in the Traffic Division of the Cook County Circuit Court and are not included in the division's case load.

The Buildings Hearings Division is charged with hearing matters relating to the city's building code. The division disposes of close to 25,000 alleged violations per year relating to building safety (structural, plumbing, electrical, etc.), and also holds hearings on complaints related to drug and gang activity in a building. In 1998, zoning code violations (non-complying uses, home-based businesses and illegal conversions of single family dwellings into apartments) and firetrap violations will begin to be heard by the Buildings Hearings Division.

The Environmental Safety Hearings Division hears alleged violations of the city's sanitation code, and is also charged with hearing alleged violations of the municipal code pertaining to the accumulation, disposal and transportation of solid waste, matters relating to unsanitary food businesses, and transportation violations such as obstruction of a public way. In the near future, licensed care facilities such as nursing homes and day care centers will also come under the purview of the division.

The Consumer Affairs Hearings Division covers a large number of businesses and consumer matters, including: food product and grocery stores; health services, including ambulances, day care centers, nursing homes and hospitals; dry cleaners; gas stations; home repair and motor vehicle shops; thousands of cases involving taxicab companies and drivers; immigration fraud; valet parking complaints; operation without license; and deceptive business practices. The division also handles action taken against licenses due to delinquency on child support payments.

A "catch-all" division, the Municipal Hearings Division is authorized to enforce all provisions of the municipal code that do not carry a penalty of imprisonment, subject only to the two exceptions previously mentioned: (1) the seven "exempt" bodies and commissions

pursuant to §2-14-130(c) are not included in this division; and (2) violations of ordinances relating to weapons and massage parlors, under §2-14-190 are also excluded. The division handles all those matters which do not fit the profile of one of the other divisions. Some of the more common cases heard by the Municipal Hearings Division include vehicle impoundment (where a vehicle involved in a drug, weapon or prostitution offense is towed to a city yard); business-related city tax collection; tobacco sales to minors and unstamped cigarette sales; theft of cable television; unauthorized placement of pay phones; and police-issued ordinance-violation citations such as disorderly conduct, peddling and drinking on the public way. In Chicago, city employees are subject to wage garnishment for unpaid city debts, and the Municipal Hearings Division hears those cases as well.

2) The Office of the Director and Physical Facilities

The director of the Department of Administrative Hearings is appointed by the mayor, and is subject to city council confirmation. The director's responsibilities as laid out in the ordinance include the responsibility for the creation and reorganization of divisions within the office; appointing and removing ALOs; promulgating rules and regulations for the conduct of departmental hearings; sitting as the department's final word on review for Consumer Affairs and Municipal Hearings Division cases; and the overall management of the department.

In early 1998, Chicago will open its new downtown Central Hearing Facility for the Department of Administrative Hearings, where nearly all hearings will be held. Located at 400 West Superior Street, the department's hearing area occupies 30,000 square feet, and contains 16 hearing rooms and 14 conference rooms, all on the ground floor of the facility and ADA accessible. Two of the 16 hearing rooms seat 50 people, eight hearing rooms seat 30 people, three rooms seat 15 and three seat five people. In each room, each officer's bench has been designed to include future courtroom technology, including automated, paperless files, and a digital audio recording system. All individuals must pass through a scanning device upon entering the facility. There are ten cashier stations for on-site fine payment, and two parking lots reserved for respondents. The facility is accessed by three Chicago Transit Authority train lines and three CTA bus lines. The building is designed in the manner of a courthouse, and hearing rooms are also crafted to provide a professional, court-like atmosphere for the

department. Additionally, the department occupies 21,000 square feet of office space in an attached building.

Besides the Central Hearing Facility, the department maintains three neighborhood annex hearing facilities for the convenience of residents with Vehicle Division and Environmental Safety hearings.

III. PROCEDURES, JURISDICTION AND DUTIES

Because uniformity in the hearing process is essential to promote certainty and credibility in the system, the department has enacted its own rules and regulations for the conduct of hearings, in addition to the directives contained in the state law and the city ordinance. The department has also produced a uniform set of hearing forms and orders, and a guide for respondents, entitled "Users Guide to the Department of Administrative Hearings." The step-by-step guide avoids legalese, is easy to understand, and outlines the hearing process beginning with the issuance of a citation all the way to the appeal of an ALO's decision.

1) Pre-Hearing Procedures

(a) Commencement of Proceedings Section 2-14-070 of the ordinance allows any authorized department of the city to begin administrative proceedings by filing a copy of a notice of violation or a properly served notice of hearing to the Department of Administrative Hearings.

(b) Notice - Pursuant to 65 ILCS 5/1-2.1-5(a), local governments are required to serve parties "in a manner reasonably calculated to give them actual notice, including, as appropriate, personal service of process upon a party or its employees or agents." 65 ILCS 5/1-2.1(a).

Further, under 65 ILCS 5/1-2.1-5(b), cities must, when giving notification of an administrative hearing, "include the type and nature of the code violation to be adjudicated, the date and location of the adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing."

The notice provision for the Municipal Hearings Division states as follows:

City of Chicago Municipal Code 2-14-210. Notice.

(a) Before any administrative hearing proceeding may be conducted, the parties shall be afforded notice in compliance with this section.

(b) Unless otherwise provided by law or rule, the issuer of a notice of violation or notice of hearing shall specify on the notice his or her name and department; where known, the name and address of the person or entity charged with the violation; the date, time and place of the violation; and the section of the code or departmental rule or regulation which was allegedly violated; and shall certify the correctness of the specified information by signing his or her name to the notice.

(c) Unless otherwise provided by law or rule, a notice of violation or notice of hearing shall be served upon the alleged violator no less than seven calendar days prior to the date of the hearing: (i) by first class or express mail or by overnight carrier at the violator's residence address or, if the violator is a business entity, at any address identified for its registered agent or at its principal place of business; or (ii) by personal service.

The four other divisions have similar notice provisions in the municipal code and the department regulations.

(c) Subpoena Power of Hearing Officer

Under 65 ILCS 5/1-2.1-4(b)(2), the ALO is authorized, at the request of the parties, "to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents." The Chicago ordinance allows for the ALO to issue a subpoena as follows:

2-14-080 Subpoenas.

(a) An administrative law officer may issue a subpoena only if he or she determines that the testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is: (i) relevant to the case; and (ii)relates to a contested issue in the case.

(b) A subpoena issued under this chapter shall identify: (i) the person to whom it is directed; (ii) the documents or other items sought by the subpoena, if any; (iii) the date for the appearance of the witnesses and the production of the documents or other items described in the subpoena; (iv) the time for the appearance of the witnesses and the production of the documents or other items described in the subpoena; and (v) the place for the appearance of the witnesses and the production of the documents or other items described in the subpoena.

The section goes on to provide a seven-day minimum for either production of the documents or for appearance, and also allows the recipient of a subpoena to appeal the issuance to an ALO other than the issuing officer.

Failure to comply with a subpoena or a final judgment of the ALO will subject a person to contempt, unless properly stayed on review or appeal. ALOs do not possess contempt powers. Contempt sanctions must be sought in a separate action filed before the Circuit Court. The penalties for contempt, laid out in §2-14-100 of the Chicago ordinance, are "(a) a fine of not less than $200 and not more than $500 for each offense, (b) incarceration for not more than 180 days, and/or (c) an order to perform community service for a period not to exceed 200 hours. Each day that the violation continues shall be considered a separate and distinct offense."

Consistent with Illinois case law and the rules of the Supreme Court of Illinois, discovery is not permitted in a municipal administrative hearing, except by leave of the ALO, or in business-related tax collection cases handled by the Municipal Hearings

Division. The only pre-hearing motions that shall be considered are those for: leave to request discovery; subpoenas; continuances; or motion to set-aside a prior default.

2) Procedures at the hearing

State law sets up a basic framework for conducting the actual hearing, while the Chicago ordinance fills in the gaps. Under 65 ILCS 5/1-2.1-5, parties must be afforded certain due process considerations, i.e., adequate notice; and an opportunity to be heard, present evidence and witnesses, and be represented by counsel. Additionally pursuant to 65 ILCS 5/1-2.1-6, the rules of evidence do not govern. "Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs."

Chicago's ordinance sets out detailed procedures for Municipal Division Hearings, and other divisions maintain similar procedures pursuant to the municipal code and rules. The relevant portions of § 2-14-220 include:

(c)In no event shall the case for the city be presented by an employee of the office of administrative hearings; provided, however, that documentary evidence, including the notice of violation, which has been prepared by another department or agency of the city may be presented at the hearing by the administrative law officer.

(d) The administrative law officer may grant continuances only upon a finding of good cause.

(e) All testimony shall be given under oath or affirmation.

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(g) Subject to subsection (j) of this section, the administrative law officer may permit witnesses to submit their testimony by affidavit or by telephone.

(i) No violation may be established except upon proof by a preponderance of the evidence;

provided, however, that a violation notice, or a copy thereof, issued and signed in accordance with 2-14-210 shall be prima facie evidence of the correctness of the facts specified therein.

(j) Upon the timely request of any party to the proceeding, any person, who the administrative law 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.

(k) The record of all hearings before an administrative law officer shall include: (i) a record of the testimony presented at the hearing, which may be made by tape recording or other appropriate means; (ii) all documents presented at the hearing; (iii) a copy of the notice of violation or notice of hearing; and (iv) a copy of the findings and decision of the administrative law officer.

(l) Upon conclusion of a hearing, the administrative law officer shall issue a final determination of liability or no liability. Upon issuing a final determination of liability the administrative law officer may: (i) impose penalties and/or fines that are consistent with applicable provisions of the Municipal Code; and/or (ii) assess costs reasonably related to instituting the administrative adjudication proceeding; provided, however, that in no event shall the administrative law officer have the authority to impose a penalty of imprisonment.

(m) In the issuance of a final determination of liability, an administrative law officer shall inform the respondent of his or her right to seek judicial review of the final determination.

In addition to the enabling ordinance, the adopted rules and regulations of the Department of Administrative Hearings govern the conduct of proceedings. The city bears the initial burden of proof in the case, and the standard is by a preponderance of the evidence. Under Rule 18 of the department, the city's case may be presented by a city representative (a city attorney or otherwise), live sworn testimony and/or signed prima facie documentation. The violation notice may serve as the basis of the hearing and of the city's case against a given respondent. Typically, the city's case against a given respondent comes from the notice of violation and any witness(es) necessary to support the allegations contained in the violation. A key factor is that a violation notice (parking ticket, building code citation, etc.) can be treated as prima facie evidence of the correctness of the violation if certain pleading requirements are met.[3] If the city meets its initial burden, a respondent shall be asked to enter a plea of "admit/liable" or "deny/not liable," and may then provide evidence to rebut the notice of violation. Each party may be afforded the opportunity to make a closing argument.

The nature of the hearing varies by department. At Vehicle Division hearings, the city generally is not represented, and the signed notice of violation serves as a sworn statement on the part of the parking officer. At consumer affairs hearings, a legal officer from the Department of Consumer Services represents the city, and respondents are occasionally represented by counsel. At tax and wage garnishment hearings, city prosecutors and accountants are typically present.

At the conclusion of a hearing, the ALO makes a determination, by a preponderance of the evidence, of liability or no liability, in the form of a written order. The ALO may not waive, suspend or reduce an applicable mandatory minimum fine, nor can the officer pass upon the constitutionality of a statute, ordinance or regulation.[4] Following a determination of liability, the ALO has the power, pursuant to the city's ordinance, to require the violator to post a compliance bond with the city. The order may also serve as the basis for a lien against titled property. If a fine remains delinquent after notice to the violator, the

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[3] It has been held that using a notice of violation as prima facie evidence does not violate substantive due process so long as the ALO has subpoena power. Van Harken, 906 F. Supp. at 1195-96 (N. D. 1995) aff'd as modified, 103 F.3d 1346 (1997) cert. denied 117 S.Ct. 1846 (1997); *see also* Gardner v. City of Columbus, 841 F.2d 1272 (6th Cir. 1988).

[4] *See* Hunt v. Daley, 677 N.E.2d 456, 459 (Ill.App. 1997); Yellow Cab Company v. City of Chicago, 938 F. Supp. 500, 502 (N.D. Ill. 1996).

officer may issue an order to draw against the bond or foreclose on the lien.

Due to the volume in the Vehicle Hearings Division, a respondent may elect to contest an alleged violation by mail rather than at an administrative hearing. For every in-person hearing, approximately three violations are contested (as opposed to simply paid) via mail, usually in the form of a letter and other written materials from the respondent denying liability for the violation. In the case of an adjudication by mail, the ALO can also request additional documentation and/or require in-person testimony if deemed necessary.

3) Post Hearing Procedure

Pursuant to 65 ILCS 5/1-2.1-7, any final decision by an ALO that a municipal code violation does or does not exist is a final determination for purposes of judicial review under the Illinois Administrative Review Act. The ordinance does not empower the department to conduct post-hearing motion practice.

However, in Consumer Affairs Hearings Division and the Municipal Hearings Division matters the ordinance does allow for a direct review to the director of the Department of Administrative Hearings. Within ten business days, either party to a consumer affairs or municipal division proceeding may petition the director (or the director's designee) for review, or elect to go straight to court. The director must base the review on the record of the hearing and cannot make independent judgments of credibility without consulting the ALO. If the director does not act on the petition for review within ten business days, the petition shall be deemed denied. However, the failure to submit a petition to the director in a consumer affairs or municipal division case does not adversely affect a party's right to judicial review. Following the review to the director, if applicable and chosen, either party has the ability to appeal the case to Cook County Circuit Court, at which point the direct involvement of the Department of Administrative Hearings ceases and the matter is handled in court by the citing department.

If, at a point at which judicial review procedures have been exhausted or failed to be exercised, there still stands a fine or other sanction against a respondent, that cost, pursuant to 65 ILCS 5/1-2.1-8(c) and §2-14-250 of the ordinance, is a debt due and owing the city. At this stage, failure to comply with a financial sanction will result in a lien being imposed on the property of the respondent, and that lien

may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

State law also provides that a default judgment may be set-aside for good cause if the respondent files a motion to set-aside within 21 days of issuance of the notice of default. The ALO is given the latitude to determine if the respondent's failure to appear was for good cause, and if so, to extinguish a debt so incurred by the respondent. In matters where the case file is automated, the ALO has the ability to set aside a default and hear a case on the spot.

IV. TECHNOLOGY IN THE SYSTEM

The Department of Administrative Hearings is in the process of providing ALOs with the computer technology to maintain "paperless" files. The Vehicle Hearings Division is currently using a system in which the notice of violation is scanned into the computer system, and the ALO has the ability to call it up on the screen, along with the registration information for the license number from the Illinois Secretary of State, the history of parking tickets for the vehicle and even the maintenance history of a particular parking meter in the city, if a defective meter defense is made. All the aforementioned items can be viewed on the screen at the same time, allowing the ALO to see what amounts to the entire file at once. In a vehicle hearing-by-mail, the letter sent by the respondent and all other supporting documentation (except photos) are scanned into the system, and those are made part of the paperless file.

V. ADMINISTRATIVE LAW OFFICERS

1) Background of ALOs

As of January 1998, the Department of Administrative Hearings employed 84 ALOs. Except for a few supervising ALOS, all ALOs are independent contractors, and are not city employees. Prior to the Department of Administrative Hearings, ALOs were appointed by the commissioner of a given city department and employed by that department. Hearings themselves were conducted within the citing department. Now, ALOs are appointed by the Director of the Department of Administrative Hearings, are not city employees, and conduct hearings at a central facility, independent of other city departments.

The background requirements for ALOs are enumerated in the ordinance. Officers must be an attorney admitted in Illinois for at least three years. They must complete a training program, which includes the following:

(1) instruction on the rules of procedure of the administrative hearings which he or she will conduct;
(2) orientation to each subject area of the code violations which he or she will adjudicate;
(3) observation of administrative hearings; and
(4) participation in hypothetical cases, including ruling on evidence and issuing final orders.

Current ALOs include: former Circuit Court Judges; former public sector attorneys, i.e., Assistant State's Attorneys, Assistant Attorney Generals, and Assistant Public Defenders; civil litigators, from both the plaintiff and defendant trial bars; and general practitioners.

ALOs are assigned to calls depending on the Department's needs and the ALO's own availability. An ALO may dedicate a majority of their time to ALO service, balance their time between private practitioner and ALO service, or balance their time between semi-retirement or family and ALO service.

The department has adopted a Code of Professional Conduct for ALOs, which is intended to establish the ethical standards for the officers and the department. The Code consists of rules of reason designed to guide officers, and were drafted with the help of the Cook County Circuit Court, the Chicago Board of Ethics, the Cook County Judicial Advisory Commission, the Mayor's Commission and the Illinois Attorney Registration and Disciplinary Commission. The canons are not to provide a basis for civil liability or criminal prosecution, and are not standards of discipline in themselves, but express the policy considerations underlying the rules contained within them, and seek to mirror the Illinois Judicial Code. Issues addressed in the canons include impropriety and the appearance thereof; impartiality and disqualification due to conflict; extra-official activities and conflict with the office; outside practice of law; ex parte communication; and political activity.

An ALO is permitted to practice law if the outside practice affects neither the professional judgment of the officer nor the conduct of his or her official duties. Also, an ALO may run for public office, including an elective judicial office, without leaving the position.

2) Training of ALOs

Prior to the creation of the Department of Administrative Hearings, each department that conducted administrative hearings utilized its own training system. Today, the Department of Administrative Hearings has developed mandatory broad-based training for all ALOs, as well as division specific training. The department also cross-trains ALOs to allow a degree of flexibility in the type of cases an ALO has the ability to hear.

The department conducts quarterly seminars for all ALOs which focus on issues relating to procedural and substantive developments in administrative law. In 1997, the topics at these quarterly seminars included, among others: judicial demeanor and decision making; standards and procedures for the development of the record in a case; burdens of proof and the prima facie case; diversity awareness; the judicial review process; recent legislation affecting administrative law; and ethical considerations for hearing officers. These seminars are mandatory for all ALOs, regardless of division.

Also, each of the five divisions in the department conducts training for ALOs pertaining to the specific types of cases heard, including in-house and field reviews with experts in the particular subject matters (i.e., building and sanitation codes). The additional exposure that ALOs receive from such experts allows them to become versed on the relevant issues to an extent a judge simply could not achieve.

Administrative law officers will be formally evaluated twice per year by their division chief. These evaluations will be primarily geared toward continuing education, and will serve to indicate areas where additional training may be needed.

VI. CONCLUSION

In a period of just one year, Chicago has created a new, efficient administrative hearing system that has given new lifeblood to the city's municipal code. The expanded use of administrative hearings has benefitted all concerned parties. The courts are less congested and can use the added time to ease backlogs and devote attention to more serious cases. The city is able to enforce the municipal code more thoroughly, keep more police officers, inspectors and investigators on the street and out of court, and collect more revenue from violators due to the increased efficiency. Respondents have a system that is easier

to understand, and more responsive to their needs. Cases are heard sooner and disposed of expeditiously. The separation of the enforcement and adjudicative functions in the administrative hearing process serves to insure that a fair hearing is the utmost priority.

Because urban issues and problems are, to some degree, similar in many large American cities, the Chicago Department of Administrative Hearings has been suggested as a model for other cities around the country to consider as administrative hearings continue to emerge in use and importance on the national landscape.