

ORDINANCE NO. 13-04

AN ORDINANCE AMENDING TITLE 1, ADMINISTRATIVE, CHAPTER 17, ADMINISTRATIVE ADJUDICATION, OF MUNICIPAL CODE FOR THE VILLAGE OF MANTENO

BE IT ORDAINED by the Village President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

Section 1

That Title 1, Administrative, Chapter 17, Administrative Adjudication, of the Municipal Code for the Village of Manteno, be amended to read as follows:

CHAPTER 17

ADMINISTRATIVE ADJUDICATION

SECTION:

- 1-17-1: Code Hearing Unit Established
- 1-17-2: Hearing Officer; Appointment
- 1-17-3: Hearing Officer; Qualifications
- 1-17-4: Hearing Officer; Duties and Powers
- 1-17-5: Institution of Administrative Proceedings
- 1-17-6: Representation
- 1-17-7: Default
- 1-17-8: Adjudication by Mail
- 1-17-9: Continuances
- 1-17-10: Rules and Regulations
- 1-17-11: Subpoenas
- 1-17-12: Findings, Decision, and Order
- 1-17-13: Review Under Administrative Review Law
- 1-17-14: Judgment on Findings, Decision, and Order
- 1-17-15: Combined Code Hearing Unit Authorized

1-17-1: **CODE HEARING UNIT ESTABLISHED:** There is hereby created a code hearing unit which shall be known as the "Village of Manteno Code Hearing Unit." The Village of Manteno Code Hearing Unit is established to provide a fair and efficient method of enforcing the Municipal Code of the Village of Manteno. The Village of Manteno Code Hearing Unit may adjudicate any violation of the Manteno Municipal Code under this chapter except: 1) building code violations that must be adjudicated pursuant to Division 31.1 of Article 11 of the Illinois Municipal Code; and 2) 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. The Village reserves its right to employ all other means and methods available under the law to enforce its Municipal Code, including direct application to the courts.

1-17-2: **HEARING OFFICER; APPOINTMENT:** There is hereby created the office of hearing officer. The village president, with the advice and consent of the board of trustees, shall appoint a hearing officer to preside over the adjudication of code violations under this chapter.

1-17-3: **HEARING OFFICER; QUALIFICATIONS:** No person shall be appointed hearing officer unless he/she is an attorney licensed to practice law in the State of Illinois for at least three (3) years. Prior to conducting proceedings under this chapter, a hearing officer shall successfully complete a formal training program that includes the following: 1) instruction on the rules of procedure for the hearings that they will conduct; 2) orientation to each subject area of the Municipal Code of the Village of Manteno that he/she will administer; 3) observation of administrative hearings; and 4) participation in hypothetical cases, including rules on evidence and issuance of final orders.

1-17-4: **HEARING OFFICER; DUTIES AND POWERS:** A hearing officer shall have the following duties and powers under this chapter:

- (A) All duties set forth by state statute including:
 - 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 parties relevant to the existence of a code violation;
 - 3. Preserve and authenticate the transcript and record of the hearing and all exhibits and evidence introduced at the hearing;
 - 4. Issue and sign a written finding, decision, and order stating whether a code violation exists; and,
 - 5. Imposing penalties consistent with applicable code provisions.
- (B) Hold preliminary conferences for the settlement or simplification of issues.
- (C) Administer oaths and affirmations.
- (D) Rule upon motions, objections, and the admissibility of evidence.
- (E) Issue subpoenas for the attendance of witnesses or the production of documents or other tangible items.

(F) Exercise all powers and duties necessary and proper to the administration of fair and impartial hearing under this chapter.

1-17-5: **INSTITUTION OF ADMINISTRATIVE PROCEEDINGS:** The following shall govern the commencement of administrative adjudication proceedings under this chapter:

(A) When a police officer or other individual authorized to issue a code violation finds a code violation to exist, he or she shall note the violation on a multiple copy violation notice and report form that indicates: 1) the name and address of the defendant; 2) the type and nature of the violation; 3) the date and time the violation was observed; and 4) the names of witnesses to the violation.

(B) The violation report form shall be forwarded to the Village of Manteno Code Hearing Unit 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. The hearing date shall not be less than 30 nor more than 40 days after the violation is reported.

(C) One copy of the violation report shall be maintained in the files of the Village of Manteno Code Hearing Unit and shall become a part of the record. One copy of the report shall be returned to the individual representing the municipality so that he/she may prepare evidence of the code violation for presentation at the hearing. Finally, one copy of the report form shall be served by first class mail to the defendant along with a summons commanding the defendant to appear at the hearing.

1-17-6: **REPRESENTATION:** The Village's case may be presented by an attorney or by any other municipal employee that is not an employee of the Village of Manteno Code Hearing Unit. The case for the defendant may be presented by the defendant, his/her attorney, or any other agent or representative of the defendant.

1-17-7: **DEFAULT:** In the event a defendant or his/her attorney fails to appear at a hearing, the hearing officer shall find the defendant in default and proceed with the hearing and accept evidence relevant to the existence of a code violation.

1-17-8: **ADJUDICATION BY MAIL:** A defendant may elect to contest a violation without personally appearing at the hearing. To do so, the defendant must send a letter to the Village of Manteno Code Hearing Unit identifying his/her case, the date of the hearing, his/her desire to proceed *in absentia*, and a short argument as to why a finding a non-liability for the code violation is appropriate. To be considered, the letter must be received by the Village of Manteno Code Hearing Unit no later than five (5) days before the hearing date. A notarized affidavit shall be submitted with the letter setting for the facts that support the defendant's defense. The defendant may also include any other evidence which he/she believes supports a finding of non-liability.

1-17-9: **CONTINUANCES:** No continuances shall be authorized by the hearing officer unless it is absolutely necessary to protect the rights of the defendant. Lack of preparation shall

not be grounds for a continuance. Any continuance authorized by the hearing officer shall not exceed 25 days.

1-17-10: **RULES AND REGULATIONS:** Parties shall be provided with an opportunity to present witnesses, evidence and to cross-examine other witnesses. The formal and technical rules of evidence shall not apply at the hearings authorized by this chapter. Provided, however, evidence, including hearsay, shall only be admitted if it is of the type commonly relied upon by reasonably prudent person in the conduct of their affairs. Any other rules and regulations promulgated for the conduct of administrative hearings shall developed by the hearing officer and shall be published and kept on file in the office of the village clerk where they shall be available to the public for inspection and copying during normal business hours.

1-17-11: **SUBPOENAS:** The hearing officer may, at the request of either party, issue a subpoena compelling the appearance of a witness to testify or for the production of documents or other tangible items. Requests shall be made in writing to the Village of Manteno Code Hearing Unit. No subpoena issued pursuant to this chapter shall be valid unless signed by the hearing officer. No subpoena shall be issued by a hearing officer unless it is relevant to the contested issues in the case. All subpoenas issued shall identify: 1) the person or entity to which it is directed; 2) the documents or other items to be produced; 3) the person that is to appear; 4) the date and time for the witnesses appearance or by which the production is to be made; and 5) the location at which the witness is to appear or at which the production is to be made. No subpoenas issued under this chapter shall require the appearance of a witness, or the production of documents or other tangible items, sooner than seven (7) days after service of the subpoena.

1-17-12: **FINDINGS, DECISION, AND ORDER:** At the conclusion of the hearing, the hearing officer shall make a determination based on the evidence presented at the hearing as to whether or not a code violation exists. The determination shall be in writing and shall be designated as findings, decision, and order. The findings, decision, and order shall include (i) the hearing officer's findings of fact; (ii) a decision of whether or not a code violation exists based upon the findings of fact; and (iii) an order that states the sanction or dismisses the case if a violation is not proved. A monetary sanction for a violation under this Division shall not exceed \$750.00. A copy of the findings, decision, and order shall be served on the defendant within 5 days after it is issued. Service shall be in the same manner that the report form and summons are served under § 1-17-5 of this chapter.

1-17-13: **REVIEW UNDER ADMINISTRATIVE REVIEW LAW:** The findings, decision, and order of the hearing officer shall be subject to review in the Circuit Court of Kankakee County. The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, shall apply to and govern every action for the judicial review of the findings, decision and order of a hearing officer under this chapter.

1-17-14: **JUDGMENT ON FINDINGS, DECISION, AND ORDER:** The defendant shall pay the penalty assessed no later than 5 business days after the exhaustion of, or the failure to exhaust, judicial review procedures. All penalties assessed shall be a debt due and owing the village and may be collected in accordance with the law. Penalties not paid in a timely manner shall accrue interest in the amount of 5% per annum. 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 Village may commence a proceeding in the Circuit Court of Kankakee County for the purposes of obtaining a judgment on the findings, decision, and order.

1-17-15: **COMBINED CODE HEARING UNIT AUTHORIZED:** The corporate authorities of the Village of Manteno are authorized to combine its code hearing unit with any code hearing unit of a nearby unit of local government by intergovernmental agreement.

Section 2

If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 3

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.

Section 4

This ordinance shall be immediately in full force and effect after passage and approval in accordance with the law.

PASSED by the President and Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 6th day of May, 2013.

DEPOSITED with the Village Clerk
this 6th day of May, 2013.

Alisa Blanchette
ALISA BLANCHETTE, Village Clerk

APPROVED by me this 6th
day of May, 2013.

Timothy O Nugent
TIMOTHY O. NUGENT, Village President