

**ORDINANCE NO. 13-05**

**AN ORDINANCE AMENDING TITLE 8, BUILDING REGULATIONS, BY ADDING CHAPTER 10, ADMINISTRATIVE ADJUDICATION OF BUILDING CODE VIOLATIONS, 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 8, Building Regulations, of the Municipal Code for the Village of Manteno, be amended by adding Chapter 10, Administrative Adjudication of Building Code Violations, to read as follows:

**CHAPTER 10**

**ADMINISTRATIVE ADJUDICATION OF BUILDING CODE VIOLATIONS**

**SECTION:**

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

8-10-1: **CODE HEARING UNIT ESTABLISHED:** There is hereby created a code hearing unit which shall be known as the "Village of Manteno Building Code Hearing Unit." The Village of Manteno Building Code Hearing Unit is established to provide a fair and efficient method of enforcing any municipal law, housing or building code or zoning ordinance that establishes construction or other health and safety standards of the Village of Manteno or any ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the

removal of inoperable motor vehicles, or the abatement of nuisances from private property (collectively "Building Code"). The Village of Manteno reserves the right to employ all other means and methods available under the law to enforce its Building Code, including direct application to the courts.

8-10-2: **HEARING OFFICER; APPOINTMENT:** The hearing officer appointed to preside over the administrative adjudication of ordinance violations pursuant to Title 1, Administrative, Chapter 17, Administrative Adjudication, of the Municipal Code for the Village of Manteno shall be the hearing officer and shall preside over the adjudication of Building Code violations under this chapter.

8-10-3: **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.

8-10-4: **INSTITUTION OF ADMINISTRATIVE PROCEEDINGS:** The following shall govern the commencement of administrative adjudication proceedings under this chapter:

(A) When the Director of Building and Zoning or other individual authorized to issue a Building Code violation finds a Building 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 owner of the property; 2) the type and nature of the violation; 3) the date and time the violation was observed; 4) the names of witnesses to the violation; and 5) the address of the property where the violation is observed.

(B) The violation report form shall be forwarded to the Village of Manteno Building 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 Building 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 owner of the structure, along with a summons commanding the owner to appear at the hearing. If the name of the owner of the structure cannot be ascertained or if service on the owner cannot be made by mail, service may be made on the owner by posting or nailing a copy of the violation report form on the front door of the structure where the violation is found, not less than 20 days before the hearing is scheduled.

8-10-5:       **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 Building Code Hearing Unit. The case for the owner may be presented by the owner, his/her attorney, or any other agent or representative of the owner.

8-10-6:       **DEFAULT:** In the event an owner or his/her attorney fails to appear at a hearing, the hearing officer shall find the owner in default and proceed with the hearing and accept evidence relevant to the existence of a Building Code violation.

8-10-7:       **ADJUDICATION BY MAIL:** An owner may elect to contest a violation without personally appearing at the hearing. To do so, the owner must send a letter to the Village of Manteno Building 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 Building Code violation is appropriate. To be considered, the letter must be received by the Village of Manteno Building 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 owner's defense. The owner may also include any other evidence which he/she believes supports a finding of non-liability.

8-10-8:       **CONTINUANCES:** No continuances shall be authorized by the hearing officer unless it is absolutely necessary to protect the rights of the owner. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by the hearing officer shall not exceed 25 days.

8-10-9: **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.

8-10-10: **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 Building 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.

8-10-11: **DEFENSES:** It shall be a defense to a Building Code violation charged under this chapter if the owner, his attorney, or other agent or representative proves to the hearing officer's satisfaction that:

(A) The Building Code violation alleged in the notice does not in fact exist, or at the time of the hearing the Building Code violation has been remedied or removed;

(B) The Building Code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the dwelling free of such Building Code violations, the current occupants continue to cause the Building Code violations; or

(C) An occupant or resident of the dwelling has refused entry to the owner or his agent to all or a part of the dwelling for the purpose of correcting the Building Code violation.

8-10-12: **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 Building 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 Building Code violation exists based upon the findings of fact; (iii) an order that requires the owner to correct the violation or dismisses the case if a violation is not proved and (iv) a monetary sanction. A monetary sanction for a violation under this chapter shall not exceed \$750.00. A copy of the findings, decision, and order shall be served on the owner within 5 days after it is issued. Service shall be in the same manner that the report form and summons are served under § 8-10-4

of this chapter. Monies received by the Village as payment for any monetary sanction may be used for general corporate purposes.

8-10-13: **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.

8-10-14: **JUDGMENT ON FINDINGS, DECISION, AND ORDER:** The owner 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 Building 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.

8-10-15: **SANCTIONS APPLICABLE TO OWNER AND PROPERTY:** The order to correct a Building Code violation and the sanctions imposed by the Village as a result of a finding of a Building Code violation under this chapter shall attach to the property as well as to the owner of the property, so that a finding of a Building Code violation against one owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of property takes title subject to the findings, decision and order of the hearing officer under this chapter.

## **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 6<sup>th</sup> day of May, 2013.

DEPOSITED with the Village Clerk  
this 6<sup>th</sup> day of May, 2013.

Alisa Blanchette  
ALISA BLANCHETTE, Village Clerk

APPROVED by me this 6<sup>th</sup>  
day of May, 2013.

Timothy O. Nugent  
TIMOTHY O. NUGENT, Village President