

VILLAGE OF CHATHAM, ILLINOIS

ORDINANCE NO. 08- 40

AN ORDINANCE ADDING CHAPTER 39 TO THE
CODE OF ORDINANCES OF THE VILLAGE OF CHATHAM,
RELATING TO A CODE HEARING DEPARTMENT

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF CHATHAM, ILLINOIS
THIS 23 DAY OF Sept., 2008

Published in pamphlet form by the authority of the President and
Board of Trustees of the Village of Chatham, Sangamon County,
Illinois, this 23 day of Sept., 2008

**AN ORDINANCE ADDING CHAPTER 39 TO THE
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*BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE
VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:*

SECTION 1: Chapter 39 is hereby added to the Code of Ordinances of the
Village of Chatham, to state as follows:

CHAPTER 39 CODE HEARING DEPARTMENT

39.1. Definitions

As used in this Chapter, unless the context requires otherwise:

"Code" means any provision of the Village of Chatham Code of Ordinances except for (i) building code violations that must be adjudicated pursuant 65 ILCS 5/11-31.1 *et seq.* pertaining to demolition of unsafe buildings; (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.

39.2. Code hearing department established.

The Village hereby establishes a Code Hearing Department as a separate and independent agency in the municipal government. The function of the hearing department is to expedite the prosecution and correction of code violations in the manner set forth in this Chapter. The Code Hearing Department may adjudicate any violation of the Code. The Code Hearing Department shall be supervised by the Director of Utilities and Administration, who shall also arrange for and provide all required staff assistance to the Hearing Officer.

39.3. Hearing procedures not exclusive.

This Chapter does not preclude the Village from using other methods to enforce the provisions of its Code.

39.4 Hearing Officer

A. The position of Hearing Officer is hereby created. The Hearing Officer shall be appointed by the Village President with the advice and consent of the Village Board and shall serve at the pleasure of the Village President. The Hearing Officer shall be compensated at an hourly rate of \$200.00 per hour plus expenses and shall be an independent contractor.

B. The Hearing Officer shall be an attorney licensed to practice law in the State of Illinois for at least 3 years. Prior to conducting proceedings under this Chapter, the hearing officer shall successfully complete a formal training program as prescribed by Section 1-2.2-1 of the Illinois Municipal Code.

C. The Hearing Officer shall have the duty to:

(1) preside at an administrative hearing called to determine whether or not a code violation exists;

(2) hear testimony and accept evidence from all interested parties relevant to the existence of a code violation;

(3) preserve and authenticate the transcript, if any, and record of the hearing and all exhibits and evidence introduced at the hearing; and

(4) issue and sign a written finding, decision, and order stating whether a code violation exists.

39.5 Instituting code hearing proceedings.

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 (i) the name and address of the defendant, (ii) the type and nature of the violation, (iii) the date and time the violation was observed, and (iv) the names of witnesses to the violation.

The violation report form shall be forwarded to the Code Hearing Department 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.

One copy of the violation report form shall be maintained in the files of the Code Hearing Department and shall be part of the record of hearing, one copy of the report form shall be returned to the individual representing the municipality in the case so that he or she may prepare evidence of the code violation for presentation at the hearing on the date indicated, and 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. If the violation report form requires the respondent to answer within a certain amount of time, the Village shall reply to the answer within the same amount of time afforded to the respondent.

39.6. Subpoenas; defaults.

At any time prior to the hearing date, the Hearing Officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. If on the date set for hearing the defendant or his or her attorney fails to appear, the hearing officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the existence of a code violation.

39.7. Continuances; representation at code hearings.

No continuances shall be authorized by the Hearing Officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the defendant. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a hearing officer under this Chapter shall not exceed 25 days. The case for the municipality may be presented by an attorney designated by the Village. The case for the defendant may be presented by the defendant or his or her attorney. Corporations, limited liability companies, and other legal persons other than natural persons shall be represented by an attorney.

39.8. Hearing; evidence.

At the hearing the Hearing Officer shall preside, shall hear testimony, and shall accept any evidence relevant to the existence or non existence of a code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter. The proceedings shall be electronically recorded, and any

party to the proceedings may, at his, her or its discretion, have the proceedings transcribed by a court reporter.

39.9 Findings, decision, and order.

At the conclusion of the hearing, the Hearing Officer shall make a determination on the basis of 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 Chapter shall not exceed \$750.00 or the amount specified in the relevant section of this Code governing the offense, whichever is the lesser. 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 Section 39.5 of this Chapter. Payment of any penalty or fine and the disposition of fine money shall be by payment to the Village Clerk or to the Village Office, which is authorized to receive fine money on behalf of the Village Clerk.

39.10 Review under Administrative Review Law.

The findings, decision, and order of the Hearing Officer shall be subject to review in the circuit court of the county in which the municipality is located. 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.

39.11 Judgment on findings, decision, and order.

A. Any fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures under the Administrative Review Law shall be a debt due and owing the municipality and, as such, may be collected in accordance with applicable law.

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 Village may commence a proceeding in the Circuit Court of Sangamon County for purpose of obtaining a judgment on the findings, decision, and order. The Village may consolidate multiple findings, decisions, and orders against a person in such

a proceeding. Upon commencement of the action, the Village 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 was issued in accordance with this Chapter and the applicable provision of this Code. Service of the summons and a copy of the petition may be by any method provided for by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions, and costs imposed by the findings, decision, and order does not exceed \$2,500. If the court is satisfied that the findings, decision, and order was entered in accordance with the requirements of this Chapter and the applicable provision of the Code and that the defendant had an opportunity for a hearing under this Chapter and for judicial review as provided in this Chapter:

(1) The court shall render judgment in favor of the Village and against the defendant for the amount indicated in the findings, decision and order, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.

(2) The court may also issue any other orders and injunctions that are requested by the municipality to enforce the order of the hearing officer to correct a code violation.

39.12. Adoption by Reference of Code Hearing Provisions of Municipal Code

Division 2.2 of Article 1 of the Illinois Municipal Code, 65 ILCS 5/1-2.2-1 *et seq.* is hereby adopted and incorporated by reference. In the event of a conflict between Division 2.2 and this Chapter, Division 2.2 shall control.

SECTION 2: This ordinance is effective upon its passage, approval and publication as required by law. The Clerk shall publish this ordinance in pamphlet form and see to its inclusion in the next update of the Village of Chatham Code of Ordinances.

PASSED this 23 day of Sept., 2008.

Thomas S Gray
VILLAGE PRESIDENT

ATTEST:

Pat School
Village Clerk

AYES: 5 HERRSCHATTMAN BOYLE REYNOLDS KAVANAGH
NAYS: 0

PASSED: 9-23-08
APPROVED: 9-23-08

ABSENT: 1 McGRATH

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

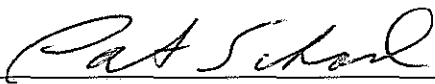
I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 08-40 adopted by the President and Board of Trustees of said Village on the 23 day of Sept., 2008, said Ordinance being entitled:

**AN ORDINANCE ADDING CHAPTER 39 TO THE
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I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 23 day of Sept., 2008.



Village Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF SANGAMON)

CERTIFICATE

I certify that I am the duly elected and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I further certify that on 9/23, 2008, the corporate authorities of such Village passed and approved Ordinance No. 08- 40 entitled:

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which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 08- 40 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on 9/23, 2008, to continue for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Clerk.

DATED at Chatham, Illinois, this 23 day of Sept., 2008.

(SEAL)



Village Clerk

RABIN, MYERS, SCHUERING & HANKEN, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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SPRINGFIELD, IL 62703

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FAX: 217.544.5017

MARK RABIN
JOHN M. MYERS
DANIEL P. SCHUERING
W. SCOTT HANKEN

Memo to: Chatham Village Board

From: John Myers

Re: Code hearing department ordinance

Date: September 23, 2008

I have asked Mark Rabin to distribute a revised Code Hearing Department ordinance for your review.

The changes from the last version are as follows:

1. The first draft had the number "38" in a number of places instead of "39"; this has been corrected.

2. There was a concern about language in paragraph 39.7 regarding representatives of defendants presenting defendants' cases. The concern had to do with lay people trying to act as attorneys. While the language comes straight from the statute, I took out the language, and the paragraph has been revised to state that defendants other than natural persons (that is, real, live, breathing people) must be represented by attorneys—as must the Village itself. Normally, I would say that it is problematic for a non-home rule municipality to depart from the language of the statute. On the other hand, the Supreme Court regulates the practice of law, and its rules trump the rules of the legislature where the practice of law is concerned. The Supreme Court does allow corporations to appear in small claims actions as defendants represented by corporate presidents and vice presidents, but the rule does not extend to ordinance violation cases. Hence, while the question is close, I think we are on reasonably solid ground requiring corporations to be represented by attorneys in our proceedings—at least until some court holds otherwise.

3. I clarified language regarding the necessity of a transcript of proceedings. Following the practice of Springfield, paragraph 39.8 now says that the proceedings will

be electronically recorded (using the taping system in the boardroom) but any party may have a court reporter at his, her or its expense.

4. In paragraph 39.2, I designated Del as the director of the Code Hearing Department. I'm afraid there might be some perceived unfairness issues if Meredith were in charge of this, inasmuch as he may be testifying from time to time.