

AGENDA
BLOOMINGTON PROPERTY MAINTENANCE REVIEW BOARD
SPECIAL MEETING - 4:00 P.M.
WEDNESDAY, SEPTEMBER 5, 2018
COUNCIL CHAMBERS, CITY HALL
109 EAST OLIVE STREET
BLOOMINGTON, ILLINOIS

1. CALL TO ORDER (Chairperson)

2. ROLL CALL (City Staff)

3. PUBLIC COMMENT

A public comment period not to exceed thirty (30) minutes will be held during each Board and Commission meeting, as well as all regularly scheduled City Council meetings, Committee of the Whole meetings, meetings of committees and/or task forces (hereinafter "committees") created by the City Council, work sessions, and special meetings of the City Council. Nothing herein shall prohibit the combination of meetings, at which only one public comment period will be allowed.

Anyone desiring to address the Board, Commission, Committee or City Council, as applicable, must complete a public comment card at least five (5) minutes before the start time of the meeting. Public comment cards shall be made available at the location of the meeting by City staff at least 15 minutes prior to the start time of the meeting. The person must include their name, and any other desired contact information, although said person shall not be required to publicly state their address information. If more than five individuals desire to make a public comment, the order of speakers shall be by random draw. If an individual is not able to speak due to the time limitation and said individual still desires to address the individuals at a future meeting of the same type, said individual shall be entitled to speak first at the next meeting of the same type. (Ordinance No. 2015-46)

4. REGULAR AGENDA

A. TEXT CHANGES: Board consideration to revise language in Chapter 1 Section 9.1 Administrative Adjudication See Exhibit A (Presented by city staff)

B. MEETING SCHEDULE for 2019: Board consideration of 2019 quarterly meeting schedule. See Exhibit B (Presented by city staff)

5. OLD BUSINESS

6. NEW BUSINESS

7. ADJOURNMENT

For further information contact:
Carey Snedden, Code Enforcement Division Manager
Department of Community Development
Government Center
115 E. Washington Street, Bloomington, IL 61701
Phone: (309) 434-2345 Fax: (309) 434-2801
E-mail: csnedden@cityblm.org

EXHIBIT A
ORDINANCE NO. 2018 -

AN ORDINANCE AMENDING BLOOMINGTON
CITY CODE CHAPTER 1, SECTION 9.1
PERTAINING TO ADMINISTRATIVE ADJUDICATION

BE IT ORDAINED by the City Council of the City of Bloomington, Illinois (additions are indicated by underlining; deletions are indicated by strikeouts):

SECTION 1. That Bloomington City Code Chapter 1, shall be amended by amending Section 9.1 to read as follows:

SEC. 9.1: ADMINISTRATIVE ADJUDICATION.

(a) Definitions. For the purposes of this Section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) Alleged violator. Person charged with violating any ordinance or law in the City of Bloomington.
- (2) Building code. Any City ordinance or law that establishes construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures in the City.
- (3) Code violation. Non-compliance with any building code or non-building code ordinance or law adopted by the City.
- (4) Hearing Officer. Also known as an Administrative Law Judge, is a ~~A~~ licensed attorney in the State of Illinois who is appointed by the City Manager and who meets the requirements of Section 9.1(d), whose duty it is to:
 - a. Preside at an administrative hearing called to determine whether or not a Code violation exists;
 - b. Hear testimony and accept evidence from the inspector, the building or property owner and all interested parties relevant to the existence of a Code violation;
 - c. Take judicial notice of all public records of McLean County, Illinois;
 - d. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing; and

- e. Issue and sign a written finding, decision and order stating whether a Code violation exists.
- (5) Inspector/Public Official. A City employee whose duties may include the inspection and examination of structures or property in the City to determine if zoning or other Code violations exist.
 - (6) Non-building code. Any City ordinance or law, except for a building code ordinance or law, which prohibit certain actions or behaviors that are contrary to the public's health, safety and welfare.
 - (7) Officer. A full or part-time Bloomington Police Department Officer or Security Officer.
 - (8) Chronic property. A property location that has had more than one violation issued against the property location within 12 calendar months of the initial violation occurrence.
 - (9) Court costs. The costs associated with operating the City's administrative court, including the payment of the hearing officer, City attorneys, clerical staff and service fees.
- (b) Code Hearing Division.
- (1) There is hereby established a Code Hearing Division, the function of which is to expedite the prosecution and correction of Code violations in the manner set out in this Section. The Administrative Law Judge hearing officer and such other agents or employees assigned to assist the Administrative Law Judge hearing officer by the City Manager shall constitute the Code Hearing Division.
 - (2) The adoption of this Section does not preclude the City from using other lawful methods to enforce the provisions of this Code.
- (c) Powers of the Hearing Officer. The Administrative Law Judge Hearing Officer shall have the following powers:
- (1) Preside at an administrative hearing called to determine whether or not a Code violation exists;
 - (2) Hear testimony and accept evidence that is relevant to the existence of a Code violation;
 - (3) Issue subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;

- (4) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
- (5) Issue a written determination based on the evidence presented at the hearing, stating whether a Code violation exists. The determination shall be in writing and shall include a written finding of fact, decision and order including the fine, penalty, or action with which the defendant must comply; and
- (6) Impose court costs in the amount of \$110.00 for each case that appears in Administrative Court. When a violation is not abated and/or behavioral fine is not paid in full prior to the first court appearance in Administrative Court, the minimum penalties shall be imposed consistent with applicable Code provisions and upon finding a party liable for the charged violation. In lieu of court costs, the administrative law judge may approve a plea agreement in behavioral cases if offered by both the attorney representing the City and the defendant. ~~Impose penalties consistent with applicable Code provisions and assess costs upon finding a party liable for the charged violation.~~ The maximum monetary fine under this Section shall not exceed \$50,000.00. The fine shall be exclusive of costs of enforcement or costs imposed to secure compliance with the City's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the municipality.
- (7) Issue a determination of chronic property, status and order re-inspection dates at a minimum of 3 months, 6 months and 12 months.

(d) Requirements of the Administrative Law Judge-Hearing Officer. Prior to conducting a hearing as provided under this Section, the Administrative Law Judge-Hearing Officer shall have successfully completed a formal training program which includes the following:

- (1) Instruction on the rule of procedure of the administrative hearings which he or she will conduct;
- (2) Orientation to each subject area of the Code violations that they will adjudicate;
- (3) Observation of administrative hearings;
- (4) Participation in hypothetical cases, including ruling on evidence and issuing final orders;

The Administrative Law Judge-Hearing Officer must be an attorney licensed to practice law in the State of Illinois for at least three years. The Corporation Counsel and City Manager shall certify that all requirements provided under this subsection (d) have been met.

(e) Code Hearing Procedure.

- (1) When an inspector, public official, or officer finds a code violation, he shall note the violation on a violation notice and report form, indicating the name and address of the property owner of alleged violator, the type and nature of the violation, the date and time the violation was observed, the names of witnesses to the violation, and the address of the property or location where the violation was observed. Chronic property owners who have been to Administrative Court once already within a rolling calendar year, shall be immediately referred to Administrative Court on any and all future violations. Individuals who have not been to Administrative Court within a rolling calendar year on a property code violation will first be sent a notice and abatement opportunity in accordance with the procedures of the Community Development Department.
- (2) The violation report form shall be forwarded by the inspector or officer to the Code Hearing Division where a docket number shall be affixed to the form and a hearing date noted in the blank spaces provided for that purpose on the form. For any Code violation, the hearing date shall not be less than 14 days after a Code violation is reported by the inspector or officer. Hearings shall be scheduled with reasonable promptness, provided that an alleged violator shall have at least 16 ~~14~~ days after service of process to prepare for a hearing. If service is provided by mail, the 15-day period shall begin to run on the day that the notice is deposited in the mail.
- (3) One copy of the violation report form shall be maintained in the files of the Code Hearing Division and shall be part of the record of hearing; one copy of the report form shall be returned to the inspector or officer; and one copy of the report form shall be served by personal service or first class mail on the alleged violator or the owner of the property, in the case of a code violation, along with a summons commanding the owner to appear at the hearing. For Code violations, if the name of the owner of the property 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 property where the violation was found, not less than 16 ~~14~~ days before the hearing date.
- (4) Parties shall be served with process 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; service by mail at a party's address; or notice that is posted upon the property where a Code violation is found when the party is the owner or manager of the property.
- (5) Parties shall be given notice of the hearing which includes the type and nature of the Code violation to be adjudicated, the date and location of the

hearing, the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing.

- (6) Parties shall be provided with an opportunity for a hearing during which they may be represented by counsel, present witnesses, and cross examine opposing witnesses. Parties may request the Administrative Law Judge ~~Hearing Officer~~ to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents.
- (7) If the Administrative Law Judge determines the property falls within the chronic property definition, the property owner shall be notified in Administrative Court that this property location is considered a chronic property and the provisions of this subsection shall apply. Chronic property shall not be offered dismissal of the case upon payment of court costs and abatement. Rather, a code violation issued on a chronic property shall be placed on an inspection schedule with minimum inspections being held at 3 months from the first administrative court date, 6 month inspection from the first administrative court date and a 12 month status check from the first administrative court date. If the property has no further violations within that 12 month time frame, the Administrative Court case shall be dismissed upon payment of court costs and any applicable re-inspection fees with no fine assessed. If violations are found within the 12-month period, the Administrative Law Judge shall order a fine of no-less the minimum set forth in the applicable City Code provisions.

(f) Subpoenas. At any time prior to the hearing date, the Administrative Law Judge ~~Hearing Officer~~ assigned to hear the case may, at the request of the inspector, the officer, attorney for the City, or the alleged violator or his attorney, issue subpoenas directing witnesses to appear and give testimony at the hearing.

(g) Default.

- (1) If on the date set for hearing the alleged violator or his attorney fails to appear, the Administrative Law Judge ~~Hearing Officer~~ may find the alleged violator in default and shall proceed with the hearing and accept evidence relevant to the existence of a Code violation.
- (2) 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 subsection (e) shall be prima facie evidence of the correctness of the facts specified therein.

(h) Representation at Code Hearings and Continuances.

- (1) The case for the City may be presented by an attorney designated by the City Manager. However, in no event shall the case for the City be presented

by an employee of the Code Hearing Division. The case for a dwelling owner involving a Code violation may be presented by the owner, his attorney, or any other agent or representative as allowed by law. The case for an alleged violator involving a Code violation may be presented by the alleged violator or his attorney.

(2) For Code violations, continuances shall only be authorized by the Administrative Law Judge~~Hearing Officer~~ and/or by agreement with City Legal. Lack of preparation shall not be grounds for a continuance in proceedings under this Section except in cases where good cause is shown at the hearing.

(i) Evidence at Hearing.

(1) At the hearing, a Administrative Law Judge~~Hearing Officer~~ shall preside and shall hear testimony and accept any evidence relevant to the existence or nonexistence of a Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Section. 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.

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

(j) Retaliatory Action Against Occupants Prohibited. No action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceedings shall be threatened or instituted against an occupant of a dwelling solely because such occupant agrees to testify or testifies at a Code violation hearing.

(k) Defenses to Code Violations. It shall be a defense to a Code violation charged under the Bloomington City Code if the owner, his attorney, or any other agent or representative proves to the Hearing Officer's satisfaction that:

(1) The Code violation alleged in the notice did not in fact exist at the time of the alleged violation; or

(2) For violations of a building code or property code, the Code violation has been removed or remedied by the alleged violator at the time of the hearing, but only if the alleged violator has not had a Code violation within the previous 24 months. The violator shall be required to provide proof of compliance.

(l) Findings, Decision, Order of the Hearing Officer, Hearing Costs.

(1) At the conclusion of the hearing, the Administrative Law Judge~~Hearing Officer~~ shall make a determination, on the basis of the evidence presented

at the hearing, whether or not a Code violation exists. The determination shall be in writing and shall be designated as the findings, decision and order. The findings, decision and order shall include the Hearing Officer's findings of fact, a decision whether or not a Code violation exists based upon the findings of fact, and an order, ordering the owner to correct the violation or dismissing the case in the event a violation is not proved. If a Code violation is proved, the order may also impose the sanctions that are provided in the Code for the violation proved. A copy of the findings, decision and order shall be served on the owner within five days after they are issued. Service shall be in the same manner as the report form and summons are served pursuant to subsection (e) of this Section. Payment of fines shall be made as directed by the City Manager and the disposition of fine money may be determined, from time to time, by separate ordinance or resolution of the City Council.

- (2) In the event that the order provided for the correction of the violation, the ~~Administrative Law Judge Hearing Officer~~ shall establish a hearing date which would be after the date established for the correction of the violation in order to determine compliance with the order. At such time, the ~~Administrative Law Judge Hearing Officer~~ shall hear testimony and accept any evidence relevant to the abatement of the violation in accordance with the order.
- (3) Unless a finding of not liable is made by the Administrative Law Judge, the Administrative Law Judge shall order payment of court costs in the amount of \$110.00. If the hearing officer determines that a Code violation exists, the Hearing Officer shall order payment to cover the costs of the hearing in the amount of \$100.00. The costs shall become an amount due and owing to the City and shall be part of the order issued against the violator.

(m) Administrative Review Law to Apply. Any final decision by a ~~Administrative Law Judge Hearing Officer~~ that a Code violation does or does not exist shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law. Any person filing for judicial review under the Administrative Review Law shall be subject to the assessment of costs for the preparation and certification of the record of proceedings before the Hearing Officer. Any failure to pay such fee shall subject the party seeking review to the provisions of 735 ILCS 5/3-109, including dismissal of the complaint on a motion by the City.

(n) Enforcement of Judgment.

- (1) 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 Illinois Administrative Review Law are a debt due and owing the municipality and may be collected in accordance with applicable law.

- (2) 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 Administrative Law Judge ~~Hearing Officer~~ may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.
- (3) In any case in which a defendant has failed to comply with a judgment ordering a defendant to correct a Code violation or imposing any fine or other sanction as a result of a Code violation, any expenses incurred by a municipality to enforce the judgment, including, but not limited to, attorney's fees, court costs, and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a Hearing Officer, shall be a debt due and owing the municipality and may be collected in accordance with applicable law. Prior to any expenses being fixed by an Administrative Law Judge ~~hearing officer~~ pursuant to this subsection (3), the City shall provide notice to the defendant that states that the defendant shall appear at a hearing before the Administrative Law Judge ~~Hearing Officer~~ to determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such a hearing, which shall not be less than seven days from the date that notice is served. If notice is served by mail, the seven day period shall begin to run on the date that the notice was deposited in the mail.
- (4) Upon being recorded in the manner required by Article XII of the Code of Civil Procedure or by the Uniform Commercial Code, a lien shall be imposed on the real estate or personal estate, or both, of the defendant in the amount of any debt due and owing the City under this Section. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.
- (5) An Administrative Law Judge ~~Hearing Officer~~ may set aside any judgment entered by default and set a new hearing date, upon a petition filed within 21 days after the issuance of the order of default, if the Administrative Law Judge ~~Hearing Officer~~ determines that the petitioner's failure to appear at the hearing was for good cause or at any time if the petitioner establishes that the City did not provide proper service of process. If any judgment is set aside pursuant to this paragraph (5), the Administrative Law Judge ~~hearing officer~~ shall have authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the City as a result of the vacated default judgment.

(o) Findings and Sanctions to Run with Property on Code Violations. The order to correct a Code violation and the sanctions imposed by the City as the result of a fine of a Code violation under this Section shall attach to the property as well as to the owner of the property, so

that a finding of a 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 subject to the findings, decision and order of an Administrative Law Judge ~~Hearing Officer~~ under this Section.

SECTION 2. Except as provided herein, the Bloomington City Code, as amended, shall remain in full force and effect.

SECTION 3. The City Clerk shall be, and she is hereby directed and authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 4. This Ordinance is enacted pursuant to the authority granted to the City as a home rule unit by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 5. This Ordinance shall take effect ten (10) days after approval and publication.

PASSED this ____ day of _____, 2018.

APPROVED this _____ day of _____, 2018.

APPROVED:

TARI RENNER
Mayor

ATTEST:

CHERRY L. LAWSON
City Clerk

EXHIBIT B

Property Maintenance Review Board 2019 Quarterly Meeting Schedule

Meetings will be on the fourth Thursday in January, April, July and October

Located in the City of Bloomington City Council Chambers at 4:00 PM

Quarterly meeting dates will be as follows:

January 24, 2019

April 25, 2019

July 25, 2019

October 24, 2019

These meeting dates have to be submitted to city council for approval.

The Property Maintenance Review Board must approve these dates before staff can submit to the city clerk for council agenda consideration.