VILLAGE OF HOPKINS PARK, ILLINOIS

ORDINANCE NO 12-__04__ (AMENDED)

RE: AUTHORIZING ADMINISTRATIVE ADJUCATION OF ORDINANCE VIOLATIONS

ADOPTED BY THE

BOARD OF TRUSTEES OF THE

VILLAGE OF HOPKINS PARK, ILLINOIS

THIS 15th DAY OF May, 2012

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF HOPKINS PARK, ILLINOIS

THIS 15th DAY OF May 2012

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COUNTY CLERK
KANKAKEE COUNTY

VILLAGE OF HOPKINS PARK, ILLINOIS

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Published in pamphlet form by authority of the President and Board of Trustees of the Village of Hopkins Park, Illinois
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ORDINANCE NO. 12-_____

ORDINANCE OF THE VILLAGE OF HOPKINS PARK

RE: AUTHORIZING ADMINISTRATIVE ADJUDICATION OF ORDINANCE VIOLATIONS

WHEREAS, the Village of Hopkins Park has a responsibility to safeguard the health, safety, and welfare of all its residents; and

WHEREAS, the Village has passed ordinances which help fulfill such responsibility; and

WHEREAS, the Village has been prosecuting said tickets through the Circuit Court; and

WHEREAS, the State Legislature has provided for municipalities to provide by ordinance a system of administrative adjudication of municipal code violations; and

WHEREAS, the Mayor and Board of Trustees has considered the benefits of an administrative adjudication system and have determined that it is appropriate and in the best interest of the Village to implement such a system.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and the Board of Trustees of the Village of Hopkins Park, Kankakee County, Illinois as follows:

Section 1: That the Village Code of the Village of Hopkins Park, Illinois, is hereby amended by adding Chapter _____ to Title _____, Administrative Code, which shall read as follows:

_____. **Code Hearing Unit—Establishment.** There is hereby created a Code Hearing Unit which shall be known as the "Village of Hopkins Park Code Hearing Unit" and authorized to conduct administrative adjudication proceedings for the Village, its departments and its officers

_____. **Hearing Officers—Appointment.** The Mayor of the Village of Hopkins Park Board, with the advise and consent of the Village Board of Trustee, shall appoint one or more hearing officers for the purposes in this section. A Hearing Officer may not be a Code Enforcement Officer or other law enforcement officer.

_____. **Hearing Officers—Powers and Duties.** Hearing Officers shall have the following powers:

a. All powers authorized by State statue, including, but not limited to the following:

i. Hearing testimony and accepting evidence that is relevant to the existence of the Code violation;

ii. Issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;

iii. Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;

iv. Issuing a determination based on the evidence presented at the hearing, of 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

v. Imposing penalties consistent with applicable code provisions and assessing costs upon finding a party liable for the charged violation, except, however, that in no event shall the hearing officer have the authority to (1) impose a penalty of incarceration, or (2) impose a fine in excess of $50,000 or at the option of the municipality, such other amount not to exceed the maximum amount established by the Mandatory Arbitration System as prescribed by the Rules of the Illinois Supreme Court from time to time for the judicial circuit in which the municipality is located. The maximum monetary fine under this item (v) shall be exclusive of costs of enforcement or costs imposed to secure compliance with the municipality's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the municipality.

b. Hold conferences for the settlement or simplification of issues;

c. Administer oaths and affirmations;

d. Rule upon motions, objections, and the admissibility of evidence;

e. Subject to the provisions of this chapter, subpoena relevant witnesses and the production of relevant documents, records or other information;

f. Exercise all powers and duties necessary and proper to the administration of fair hearings.

_____. **Hearing Officers—Training Requirements.** Prior to conducting an administrative adjudication proceeding, a Hearing Officer may be required to complete a training program approved by the Village Board of Trustees, which may include the following:

a. Instruction on the Village of Hopkins Park Regulations for the Conduct of Administrative Hearings, or the applicable Regulations for the host community if a combined Code Hearing Unit is created;

b. Orientation to each subject area of the code violations which the Hearing Officer will adjudicate;

c. Observation of the City of Kankakee or another unit of local government's administrative hearings; and

d. Participation in hypothetical cases, including ruling on evidence and issuing final orders.

_____. **Rules and Regulations—Available for Public Inspection.** The rules and regulations promulgated for the conduct of administrative hearings 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.

_____. **Instituting Administrative Adjudication Proceedings.** Any authorized department or officer of the Village may institute an administrative adjudication proceeding with the Code Hearing Unit by forwarding a copy of a notice of violation or a notice of hearing, which has been properly served, to the Code Hearing Unit.

_____. **Subpoenas.**

a. A Hearing Officer may issue a subpoena only if the Hearing Officer 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 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;

v. The place for the appearance of the witnesses and the production of the documents or other items described in the subpoena;

c. In no event shall the date identified for the appearance of the witnesses or the production of the documents or other items be less than seven (7) days after the service of the subpoena.

_____. **Compliance Bond.** In order to ensure that code violations are remedied or fines are paid in a timely manner, a hearing officer, upon issuing a final determination of liability, may require a code violator to post with the Village a compliance bond or, as appropriate, to consent to the granting and recording of a lien against titled property. Bonds and liens shall be approved by the Village Auditor and the Village Attorney's office as to form and amount. Whenever it is necessary for the Village to make repairs or otherwise expend funds to a code violation for which a bond was posted, or whenever fines or costs remain unpaid after a code violator has exhausted or failed to exhaust judicial review procedures, the Hearing Officer may, after giving the parties notice and an opportunity to be heard, issue an order permitting the Village to draw against the bond in an appropriate amount, or to foreclose the lien. The hearing Officer shall order the bond or the titled property or proceeds from the titled property, less the costs incurred by the Village, returned to the code violator upon proof of compliance with the applicable code provision and the payment of the applicable fines or costs.

_____. **Violations of Orders.** Any person, having received notice and an opportunity for a hearing as provided in this code, who knowingly fails to comply with an order issued by a Hearing Officer under this chapter, including the issuance of a subpoena, shall, if the order is not stayed by a court of competent jurisdiction prior to its effective date, be guilty of contempt. Contempt shall be punishable by a fine not less than $200.00 nor more than $500.00 for each offense. Each day that the violation continues shall be considered a separate and distinct offense. In a prosecution under this section, it shall not be a defense that a person came into compliancc with an order, sought judicial view of it, or made efforts to comply with an order subsequent to its effective date.

_____. **Fines payable to the Village of Hopkins Park Treasurer.** All fines and other monies paid to the Village of Hopkins Park in accordance with this chapter shall be remitted to the Village Treasurer.

_____. **Election of Remedies.** In no case may the Code Hearing Unit conduct an administrative adjudication proceeding for an alleged violation of the Village Code where the requested remedy is a punishment of imprisonment. Nothing in this

chapter, however, shall preclude the Village from seeking the remedy of imprisonment in a court of law, including imprisonment for failure to comply with the order of a Hearing Officer.

_____. **Administrative Hearing Not Exclusive.** Notwithstanding any other provisions of this chapter, neither the authority of the Code hearing Unit to conduct administrative adjudication procedures nor the institution of such procedures under this chapter shall preclude the Village from seeking remedies for code violations through the use of any other administrative procedure or court proceeding.

_____. **Code Hearing Unit—Jurisdiction.** The Code Hearing Unit is authorized to establish a system of administrative adjudications for the enforcement of all provisions of the Village Code, except those pre-empted by State law or Village Ordinance.

_____. **Notice.** Notice shall be as provided by State law:

a. 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 the violation is found when the party is the owner or manager of the property;

b. Parties shall be given notice of an adjudicatory hearing which includes the type and nature of the code violation(s) 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;

c. 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 hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents. Hearings shall be scheduled with reasonable promptness, provided that for hearings scheduled in all non-emergency situations, if requested by the Defendant, the defendant shall have at least 15 days after service of process to prepare for a hearing. For purposes of this subsection (c), "non-emergency situations" means any situation that does not reasonable constitute a threat to the public interest, safety or welfare. If service is provided by a 15 day period shall begin to run on the day that the notice is deposited in the mail.

_____. **Administrative Hearings.**

a. Any administrative adjudication proceeding conducted by the office of Administrative Adjudication shall afford the parties an opportunity for a hearing before an administrative law officer;

b. An attorney who appears on behalf of any person shall file with the administrative law officer a written appearance on a form provided by the Code Hearing Unit for that purpose;

c. In no event shall the case for the Village be presented by an employee of the Code Hearing Unit; provided, however, that any documentary evidence, including the notice of violation, which has been prepared by another department or office of the Village, may be presented at the hearing by the Hearing Officer;

d. The Hearing Officer may grant a continuance only upon a finding of good cause;

e. All testimony shall be given under oath or affirmation;

f. The Hearing Officer may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents. Issuance of subpoenas shall be subject to the restrictions contained in this chapter;

g. Subject to this Section, the Hearing Officer may permit witnesses to submit their testimony by affidavit or by telephone;

h. The formal and technical rules of evidence shall not apply to the conduct of the hearing. Evidence, including hearsay, may be admitted only if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs;

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 this Ordinance shall be prima facie evidence of the correctness of the facts contained therein;

j. Upon timely request of any party to a proceeding, any person, who the Hearing 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 a Hearing Officer shall include:

   i. All documents presented at the hearing;

   ii. A copy of the notice of the violation or notice of the hearing; and

   iii. A copy of the findings and decision of the Hearing Officer.

l. The record of a hearing before a Hearing Officer may include a record of the testimony presented at the hearing, which may be by means of a tape recording, transcription or other appropriate means:

   i. The Code Hearing Unit shall not provide recording services or equipment;

   ii. Any party desiring to record the testimony presented at the hearings shall provide its own court reporter, transcriber, or recorder at that party's own expense regardless of the outcome of the hearing;

   iii. The Hearing officer may reasonably limit where the court reporter, transcriber, or recorder may be placed in the hearing room. If the party or the court reporter, transcriber, or recorder is unwilling to follow reasonable limitations then the Hearing Officer may remove the court reporter, transcriber, or recorder;

m. Upon conclusion of a hearing, the Hearing Officer shall issue a final determination of liability or no liability. Upon issuing a final determination of liability the Hearing Officer may:

   i. Impose penalties and/or fines that are consistent with applicable provision of the Village Code;

   ii. Issue orders that are consistent with applicable provision of the Village Code; and

iii. Assess costs reasonably related to instituting the hearing;

n. In no event shall the Hearing Officer have the authority to impose a penalty of imprisonment;

o. In the issuance of a final determination of liability, a Hearing Officer shall inform the respondent of respondent's right to seek judicial review of the final determination.

_____. **Adjudication by mail.** A respondent may elect to contest an alleged violation through adjudication by mail rather than at an administrative hearing. The respondent may use forms provided by the Code Hearing Unit or simply write a letter with any evidence respondent may have to contest the alleged violation. The respondent must sign respondent's correspondence.

_____. **Default.**

a. If at the time set for a hearing the recipient of a notice of violation or a notice of hearing, or the recipient's attorney of record, fails to appear, the Hearing Officer may find the recipient in default and proceed with the hearing and accept evidence relevant to the existence of a code violation and conclude with a finding, decision, and order. A copy of the order of default shall be served in any manner permitted under this Chapter;

b. Within 21 calendar days from the issuance of an order of default, a recipient of a notice of violation or a notice of hearing who has been found to be in default may petition the Hearing Officer to set aside the determination and set a new hearing date on the basis that the failure to appear at the hearing was for good cause. If the petition is granted, the Hearing Officer shall serve notice of the new hearing date upon the petitioner in any manner permitted by this Chapter no less than seven calendar days prior to the hearing date.

_____. **Enforcement of Hearing Officer's Order.** Any fine, other sanction or costs imposed by a Hearing Officer's order and any expenses incurred by the Village to enforce the order, including but not limited to attorney's fees, court costs, and costs related to property demolition or foreclosure, that remain unpaid after the exhaustion of, or the failure to exhaust, judicial review of a Hearing Officer's final determination of liability for a code violation shall be a debt due and owing the Village and, as such, may be collected in accordance with applicable law.

_____. Combined Code Hearing Unit Authorized. The Village Board President is authorized to create a combined Code Hearing Unit with any nearby unit(s)

of local government for the efficient and just adjudication of all ordinance violation cases for the various units of local government parties to such an Agreement.

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT UPON ITS PASSAGE IN ACCORDANCE WITH LAW.

DATED this 15th day of May, 2012, pursuant to a roll call vote as follows:

AYES: 5
NAYS: 0
ABSTAIN: 0
ABSENT: 1

Walter Jones III
Mayor, Hopkins Park

ATTEST:
Village Clerk, Hopkins Park