

MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development

DATE: February 5, 2009

RE: **Establishing Regulations to Prosecute Selected Village Codes through an Administrative Adjudication Process**

As part of the goals set by the Village Board for the Community Development Department, staff has been researching and developing an alternative process for prosecuting selected violations of Village Code. Attached for consideration by the Village Board is an Ordinance establishing an Administrative Adjudication (AA) process for selected Village building, development and property maintenance codes.

BACKGROUND

Administrative Adjudication is a process by which violations of Village Code can be adjudicated at the Village Hall by a specially trained attorney (adjudicator) who presides over cases as would a judge in a courtroom. This adjudication process was introduced by the Police Department last year for selected parking violations. With the process in place, staff is looking to expand beyond traditional traffic complaints and add selected building and property maintenance complaints.

A number of local municipalities have implemented some level of AA as part of their code enforcement efforts, including but not limited to, Batavia, Glendale Heights, Lemont, Algonquin, Crystal Lake, Evanston and Oak Park.

While Code Enforcement strives to achieve compliance without court intervention, an average of five percent (5%) of all cases ends up being prosecuted in court. Implementing the AA process is not meant to supplant our current policies to work with affected property owners and tenants to achieve code compliance. Rather the program is intended to provide for an alternate adjudication process to achieve code compliance that benefits complainants, defendants and the Village.

Benefits

The benefits of this program include:

- **Timing** - In the current Circuit Court system, the Court determines when cases are scheduled to be heard. Through the AA process, the time period from which a violation is issued to consideration by the adjudicator is anticipated to be shorter. Once in the court system, the court is in control of scheduling and granting continuances. At best, a case is resolved in 30 days. Some cases can be in process for months. Long delays increase costs by requiring additional inspections, case review and court appearance time.
- **Staff time** - In the current Circuit Court system, most of the cases pertain to retail theft and traffic with interspersed municipal code violations. With AA, there would be less time spent waiting for the cases to be heard.
- **Prosecution Costs** - Deferring cases to AA would relieve some Village expenses as there would be no need for a prosecuting attorney.
- **Fines to the Village** – Unlike Circuit Court fines, which also include court costs, payments of fines would be directed to the Village.
- **Enhanced Review Process** - AA can include more time for the resident to present the case before the judge who is more familiar with Lombard codes.
- **Binding Decisions** - The resulting decisions from an adjudicator are final and binding. As with court findings, the findings made through AA are subject to review in the Circuit Court.

Limitations

While AA does provide the benefits noted above, staff also points out that the AA program does have limitations, as set forth in State Statute and as identified by Village Counsel, including:

- **Requiring an Appearance** - Adjudicators cannot require an appearance at a hearing. However, if the defendant does not appear, the adjudicator can find the individual(s) guilty and assess fines for the offense. Those who fail to appear and those cases not in compliance at the hearing can be fined up to \$750 per day.
- **Mandating Compliance** – While the adjudicator does have the ability to request compliance, if a party does not meet the terms of compliance, the Village would have to seek enforcement of the adjudicator's decision through the Circuit Court. Additionally, there is no provision for adjudicators to issue warrants for noncompliant individuals; the adjudicator can only impose fines and request compliance.
- **Compliance Defense** - The State Statutes governing AA provide a Compliance Defense for certain types of cases. If the property is in compliance by the time the case comes before the adjudicator, the adjudicator would be unable to render a guilty verdict, assess a fine or even costs, despite the Village's costs to achieve compliance. For reference

purposes, a review of the code enforcement cases brought to Circuit Court in 2008 found 66% were in compliance by court time and 31% failed to appear.

For cases involving violations or actions created by a tenant rather than the property owner, an owner can claim tenant responsibility as an acceptable defense. In these cases, staff may be obligated to bring these cases through the traditional Circuit Court process.

- **Full-Time Status** – State Statutes require that cases only be brought forward by a full-time building official. While most of our code enforcement staff are part-time employees, those employees would continue to work with the parties to identify the issues and achieve compliance. If this does not result in compliance, the Code Enforcement Coordinator would bring the case forward for prosecution.

Circuit Court Option

Unlike home-rule communities that have implemented AA, the Village's non-home-rule status limits our ability to fully prosecute all cases in this manner. While some cases may be promptly and efficiently dispatched by the AA process, the option to take cases to the Circuit Court will need to be maintained. For example, State Statute allows only the building owner and not the tenant to be cited for cases involving weeds, litter, inactive vehicles, and nuisances through AA. However, Village staff retains the ability to determine the appropriate venue for prosecuting complaints based upon the nature of the complaint.

Implementation

Should the Board adopt the attached Ordinance, staff will begin to fully implement the AA system for selected code violations. The associated software to be purchased and utilized for the program will cost approximately \$15,000. The consultant noted that the set up and configuration of the program to suit our needs will take approximately one month. The Village's adjudicator will be able to hear such cases in March, after his requisite training period is completed.

ACTION REQUESTED

Please place this item on the February 5, 2009 Village Board Agenda for consideration. Staff recommends that the Village Board adopt an Ordinance establishing an Administrative Adjudication system for selected non-traffic violations.