

## ARTICLE VI. DIGGER

**SECTION 1.** Section 2-14-130 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

**2-14-130 Other provisions not limiting.**

*(Omitted text is unaffected by this ordinance)*

(c) Nothing in this chapter shall affect the jurisdiction of the Department of Business Affairs and Consumer Protection, the Chicago Commission on Human Relations, the zoning board of appeals, the human resources board, the board of ethics, the police board, the One-Call Adjudicatory Process established in Chapter 10-21, or the Commission on Chicago Landmarks.

**SECTION 2.** Section 2-102-030 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

**2-102-030 Commissioner – Powers and duties.**

The commissioner of transportation shall have the following powers and duties:

*(Omitted text is unaffected by this ordinance)*

(u) To administer Chapters 9-101, ~~and 9-102~~, and 10-21 and serve *ex officio* as the director of the One-Call Adjudicatory Process established in Chapter 10-21.

*(Omitted text is unaffected by this ordinance)*

(w) To enter into: (~~1~~) intergovernmental agreements transferring or otherwise allocating jurisdiction over, and carrying out construction, maintenance and repairs to, public way and other public infrastructure; and (~~2~~) agreements with public utilities and railroads regarding construction, maintenance and repairs that impact their facilities upon or adjacent to public property; and, in connection with agreements entered into under this subsection, to enter into and execute all such other instruments and to perform any and all acts, including the allocation and expenditure of duly appropriated funds, as shall be necessary or advisable in connection with the implementation of such agreements and any renewals thereto. Any such intergovernmental agreement may include provisions providing indemnification. The authority conferred in this subsection shall not include the ceding of governmental ownership of public way or the transfer of title to real estate.

*(Omitted text is unaffected by this ordinance)*

**SECTION 3.** Title 10 of the Municipal Code of Chicago is hereby amended by inserting a new Chapter 10-21, as follows:

**CHAPTER 10-21  
CHICAGO UNDERGROUND FACILITIES DAMAGE PREVENTION ORDINANCE**

**ARTICLE I. GENERAL**

**10-21-010 Title.**

This chapter shall be known and may be cited as the “Chicago Underground Facilities Damage Prevention Ordinance.”

**10-21-020 Definitions.**

As used in this chapter:

“48 hours” means two business days, beginning at 8:00 a.m. and ending at 4:00 p.m., exclusive of Saturdays, Sundays, and the following holidays, as recognized by DIGGER: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, and Christmas. Any locate request received after 4:00 p.m. on a business day will be processed as though it were received at 8:00 a.m. the next business day.

“Address” means the physical building address associated with an excavation or demolition. When a building address is not available, the term “address” means (1) the street segment address or range of addresses together with (2) a description of the relevant location.

“Approximate location” means a strip of land at least 36 inches wide, but not wider than the width of the underground facility plus 18 inches on either side of the facility.

“CDOT” means the Chicago Department of Transportation.

“Commissioner” means the Commissioner of CDOT.

“Damage” means the substantial weakening of structural or lateral support of an underground facility; the penetration or destruction of a protective coating, a housing, or another protective device of an underground facility; the partial or complete severance of an underground facility; or rendering any underground facility inaccessible.

“Demolition” means wrecking, razing, rending, moving, or removing of a structure by means of any power tool, power equipment (excluding transportation equipment), or explosives.

“DIGGER” means the 24-hour service network system established by the City of Chicago that provides a free, one-call service to persons engaged in excavation and demolition, and notifies persons who own and operate underground facilities of impending excavations and demolitions within the City’s corporate limits.

“Emergency excavation or demolition” means an excavation or demolition necessary to prevent a condition that poses an imminent danger to life or health, to repair a utility service outage, to prevent significant property or environmental damage, or to repair an existing unstable condition which will likely result in any of these conditions.

“Excavation” means any operation in which earth, rock, or other material located in or on the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives. Excavation includes, but is not limited to, grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing, saw cutting, and driving. Excavation does not include farm tillage operations; railroad right-of-way maintenance or operations; roadway surface milling; any coal mining operations regulated under the Federal Surface Mining Control and Reclamation Act of 1977 or any state law or rules or regulations adopted under the federal statute; or land surveying operations as defined in the Illinois Professional Land Surveyor Act of 1989 when not using power equipment.

“Locate request” means a notice initiated by a person engaged in an excavation or demolition, and made through DIGGER, asking the persons who own and operate underground facilities to mark their facilities at the planned excavation or demolition site.

“Open cut utility locate” means a method of locating underground facilities that requires excavation by the person who owns or operates the underground facility.

“Residential property owner” means any individual that owns or leases real property that is used by such individual as his own residence or dwelling. Residential property owner does not include any person who owns or leases residential property for the purpose of holding or developing such property, or for any other business or commercial purposes in the absence of a regular physical presence at that property. For example, an individual who lives in and owns or leases a single family home is a residential property owner as to that property. An individual who leases that same home to another individual is not a residential property owner as to that property. An individual who owns a multi-family dwelling is not a residential property owner as to that property.

“Roadway surface milling” means the removal of a uniform pavement section, not including the base or subbase, by rotomilling, grinding, or other means.

“Underground location service” means any entity that charges for the service of locating and marking underground facilities.

“Underground facility” means any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; or electronic, telephonic, or telegraphic communications; electricity; petroleum products; manufactured, mixed, or natural gas; synthetic or liquefied natural gas; propane gas; or other substances. The term “underground facilities” includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments. The term does not include any private septic system in a single- or multi-family dwelling utilized only for that dwelling and not connected to any other system.

#### **10-21-030 Powers of the Commissioner; Rules.**

(a) The Commissioner may promulgate rules to implement compliance with federal and state statutes and regulations related to pipeline safety and this chapter, including, but not limited to, rules pertaining to investigation of potential violations of this chapter, the Evaluation Panel, the Administrative Law Officer, and the One-Call Adjudication Process.

(b) The Commissioner shall have the authority to take such actions as may be necessary or appropriate to investigate violations of this chapter, issue Administrative Notices of Violation, and enforce this chapter. A violation of any rule promulgated pursuant to this Chapter 10-21 shall be deemed a violation of the applicable Code section.

## **ARTICLE II. DUTIES AND REQUIREMENTS**

#### **10-21-040 Membership in DIGGER.**

(a) Every person that owns or operates an underground facility located in the City of Chicago must become a member of DIGGER by January 1, 2017. On or before that date, the person shall register with DIGGER on-line, providing such information as the Commissioner may require, which will include at least the person’s name, and the name, title, address, telephone number, and email of the person’s representative designated to receive the notice of intent to engage in excavation or demolition required by Section 10-21-050. Additional system requirements may be imposed by the Commissioner for proper interface with the DIGGER system. The person shall also provide a map of the underground facility in the electronic format required by CDOT rules.

(b) If an underground facility becomes subject to this chapter on a date after January 1, 2017, or, if a person acquires an underground facility after January 1, 2017, the person who owns or operates that facility shall become a member of DIGGER and provide the information required under subsection 10-21-040(a) within 30 days after that date.

(c) A person owning or operating an underground facility subject to this chapter shall report to DIGGER any changes in the information required under subsection 10-21-040(a) within 30 days after the change.

(d) Property owners who own underground facilities solely by virtue of owning the property where the facilities are located are exempt from membership in DIGGER.

**10-21-050 Excavation and demolition requirements.**

(a) Every person who engages in non-emergency excavation or demolition shall:

(1) Take reasonable steps to learn the location of any underground facilities in and near the area where the excavation or demolition will be conducted.

(2) Plan the excavation or demolition in a manner designed to avoid or minimize interference with underground facilities by utilizing precautions including, but not limited to, hand or vacuum excavation methods, and visual inspection of the excavation while in progress until clear of the existing marked facility.

(3) Outline the dig site.

(4) Provide notice through DIGGER to the persons who own and operate the underground facilities in and near the excavation or demolition area, not less than 48 hours, but no more than 14 calendar days, in advance of the start of the excavation or demolition. At a minimum, this notice shall provide:

(A) the name, address, and phone number of the person engaging in excavation or demolition, and, if available, that person's e-mail address;

(B) the start date and time of the planned excavation or demolition;

(C) the address at which the excavation or demolition will take place; and

(D) the type and extent of the work involved.

Upon providing this notice, the person undertaking the excavation or demolition will receive from DIGGER a dig number to be associated with any required permits. Each separate entity involved in an excavation or demolition shall acquire its own dig numbers; a dig number acquired by a primary contractor shall not cover work performed by a subcontractor.

(5) Limit the excavation or demolition to the specific locations, dates, and times provided to DIGGER, and provide, during and following the excavation or demolition, such support for existing underground facilities in and near the excavation or demolition area as

necessary for the protection of such facilities, unless otherwise approved by the persons who own or operate the underground facilities.

(6) Backfill all excavations in such manner and with such materials as specified by the CDOT rules for the protection of existing underground facilities in and near the excavation or demolition area.

(7) Provide a follow-up notice through DIGGER to the persons who own or operate the underground facilities in and near the excavation or demolition area informing them that additional time to complete the excavation or demolition project is required if the excavation or demolition project will extend past 28 calendar days from the date of the original notice provided under subsection 10-21-050(a)(4), or, where applicable, upon expiration of the applicable public way permit, whichever is sooner. Upon providing this notice and extending any required permits, the person engaged in the excavation or demolition will receive from DIGGER a new dig number allowing an additional 28 calendar days to complete the project.

(8) Exercise due care at all times to protect underground facilities. If, after proper notification through DIGGER and arrival at the site of the proposed excavation or demolition, the person engaged in the excavation or demolition observes clear evidence of the presence of an unmarked or incompletely marked underground facility in the area of the proposed excavation or demolition, the person engaged in the excavation or demolition shall cease the excavation or demolition until either the underground facility has been marked or two hours after an additional call is made to DIGGER, whichever is sooner. The person who owns or operates the underground facility shall respond within two hours after the person engaged in the excavation or demolition calls DIGGER.

(9) Provide an additional notice through DIGGER requesting re-marking of the areas where excavation or demolition is to continue when confounding factors, including, but not limited to, weather, construction activity, and vandalism at the excavation or demolition site, cause underground facility markings to become faded or indistinguishable. Persons who own or operate affected underground facilities shall respond to a notice to re-mark within the time provided by and otherwise according to this section.

(b) Notice and response for emergency excavation or emergency demolition.

(1) Every person who engages in emergency excavation or emergency demolition shall take all reasonable precautions to avoid or minimize interference between the work and existing underground facilities in and near the excavation or demolition area, and shall notify through DIGGER, as far in advance as possible, the persons who own or operate such underground facilities. The emergency locate request required under this section shall include the information set out in subsection 10-21-050(a)(4). Upon providing this notice, the person undertaking the excavation or demolition will receive from DIGGER an emergency dig number.

(2) Any person who owns or operates an underground facility in or near an emergency excavation or emergency demolition area shall either:

(A) advise the person performing the excavation or demolition that the underground facility is not affected; or

(B) mark the approximate location of the underground facility within 2 hours or the time specified by DIGGER, whichever is longer.

(3) The advisement required under subsection 10-21-050(b)(2)(A) may be provided in person, by phone, phone message, or email. The person who owns or operates the underground facility shall be deemed to have discharged this notice obligation if the person attempts to provide notice by telephone, but is unable to do so because the person engaged in the emergency excavation or emergency demolition does not answer, and does not have an answering machine or answering service to receive the telephone call. If the person who owns or operates the underground facility attempts to provide notice by telephone but receives a busy signal, that attempt shall not discharge this notice obligation.

(4) The reinstallation of traffic control devices shall constitute an emergency for purposes of this section.

(5) An open cut underground facility locate shall constitute an emergency for purposes of this section.

(6) In no event may an emergency excavation or emergency demolition project continue for more than five days. If the person undertaking the project is aware from the outset that the project will take more than five days, he or she shall proceed under subsection 10-21-050(a). If, for unforeseen reasons, a project proceeding under this subsection 10-21-050(b) is not completed within five days, the person engaged in the excavation or demolition must cease work and acquire a non-emergency dig number through the process provided in subsection 10-21-050(a), as well as all necessary permits. To avoid the requirement to cease work, the person engaged in the excavation or demolition may acquire a non-emergency dig number at any time before the expiration of the five-day emergency project period.

(7) It shall be a violation of this section to make an emergency locate request in the absence of an emergency.

(c) Nothing in this section prohibits the use of any method of excavation if conducted in a manner that would avoid interference with underground facilities.

#### **10-21-060 Facility marking requirements.**

(a) Once DIGGER notifies an owner or operator of an underground facility of a planned excavation or demolition, the persons who own or operate underground facilities in or

near the excavation or demolition area, or any underground location service retained for the task, shall retain a written or digital record of the notice, and shall mark, within 48 hours of receipt of the notice, or by the requested date and time indicated on the notice, whichever is later, the approximate location of such underground facility.

(b) Persons who own and operate underground sewer facilities, or underground location services retained by such persons, shall respond and mark the approximate location of those underground sewer facilities when the person engaged in the excavation or demolition indicates in the notice required in subsection 10-21-050(a)(4) or 10-21-050(b)(1) that the excavation or demolition project will exceed a depth of seven feet. Persons who own and operate underground sewer facilities shall be required at all times to mark the approximate location of those sewer facilities when directional boring is the indicated type of excavation work being performed within the notice, or the excavation indicated will occur in the immediate proximity of known underground sewer facilities that are less than seven feet deep. A person who owns and operates underground sewer facilities shall not hold a person engaged in the excavation or demolition liable for damages that occur to sewer facilities that were not required to be marked under this section, provided that the person responsible for the excavation or demolition operations that damage the sewer facility makes prompt notice of the damage to DIGGER and to the persons owing or operating the utility, as required in Section 10-21-080. The requirements of this subsection 10-21-060(b) shall not require property owners who own underground facilities solely by virtue of owning the property where the facilities are located to mark privately owned underground facilities on their property.

(c) If a person who owns or operates an underground facility receives a notice under this section but does not own or operate any underground facilities within the proposed excavation or demolition area described in the notice, that person, within 48 hours after receipt of the notice or by the requested date and time indicated on the notice, whichever is later, shall so notify the person who initiated the notice, unless that person expressly waives the right to be notified that no facilities are located within the excavation or demolition area. Waiver of notice is only permissible for nonemergency locate requests. The waiver must be made at the time of the notice to DIGGER. A waiver made under this subsection is not admissible as evidence in any criminal or civil action that may arise out of, or is in any way related to, the excavation or demolition that is the subject of the waiver. The notice required under this subsection may be provided in person, by phone or phone message, or by e-mail. The person who owns or operates an underground facility discharges the obligation to provide notice under this subsection if such person attempts to provide notice by telephone but is unable to do so because the person engaged in the excavation or demolition does not answer his telephone and does not have an answering machine or answering service to receive the telephone call. If the person who owns or operates an underground facility attempts to provide notice by telephone but receives a busy signal, or attempts to provide notice by e-mail but the e-mail is returned as undeliverable, that attempt shall not discharge the obligation to provide notice under this subsection.



(d) For the purposes of this chapter, underground facility operators and underground location services may utilize a combination of flags, stakes, and paint when dig site and seasonal conditions warrant. If the approximate location of an underground facility is marked with flags, stakes, paint or other physical means, the following color coding shall be employed:

<b>Underground Facility</b>	<b>Identification Color</b>
Facility Owner or Agent Use Only	
Electric Power, Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Steam Lines	High Visibility Safety Yellow
Telecommunications Systems	Safety Alert Orange
OEMC, Police, and Fire Communication Systems	Safety Alert Orange
Water Systems	Safety Precaution Blue
Sewer Systems	Safety Green
Non-potable Water and Slurry Lines	Safety Purple
Excavator Use Only	
Temporary Survey	Safety Pink
Proposed Excavation	Safety White (Black when snow is on the ground)

**10-21-070 Third-party violations.**

It shall constitute a violation of this chapter for any person who is neither an agent, employee, or authorized locating contractor of the person who owns or operates an underground facility, nor a person engaged in the excavation or demolition activity, to remove, alter, or otherwise damage markings, flags, or stakes used to mark the location of an underground facility.

#### **10-21-080 Damage to underground facilities.**

In the event of damage to any underground facilities in connection with any excavation or demolition, the person responsible for the excavation or demolition operations shall immediately notify the affected underground facility owner or operator and DIGGER, and cease excavation or demolition in the area of the damage if the damaged facility is a threat to life or property, or if otherwise required by law. The person responsible for the excavation or demolition shall not attempt to repair, clamp, or constrict the damaged underground facility unless under the supervision of the person who owns or operates the underground facility. The underground facility owner or operator may not require the person responsible for the excavation or demolition to attempt to repair, clamp, or constrict a damaged underground facility. In the event that damage to an underground facility results in the escape of any flammable, toxic, or corrosive gas or liquid, the person responsible for the excavation or demolition shall call 9-1-1 and notify authorities of the damage. The person who owns and operates underground facilities that are damaged and the person engaged in the excavation or demolition involved shall work in a cooperative and expeditious manner to repair the affected underground facility.

#### **10-21-090 Liability or financial responsibility.**

(a) Nothing in this chapter shall be deemed to create liability or financial responsibility of CDOT or its officers and employees concerning any underground facility located on the public way by issuance of any permit or license required under this Code. It is not the intent of this chapter to change any remedies in law regarding the duty of providing lateral support.

(b) Neither DIGGER nor any of its officers, agents, or employees shall be liable for damages for injuries or death to persons or damage to property caused by acts or omissions in the receipt, recording, or transmission of locate requests or other information in the performance of its duties, unless the act or omission was the result of willful and wanton misconduct.

(c) Any residential property owner who fails to comply with any provision of this chapter and damages underground facilities while engaging in excavation or demolition on such residential property shall not be subject to a penalty under this chapter, but shall be liable for the damage caused to the owner or operator of the damaged underground facilities.

#### **10-21-100 Limitation on liability.**

(a) Under any membership agreement rules, the City's liability for the indemnification of the entity that is in charge of or managing DIGGER, or any officer, agent, or employee of that entity, or for a member of DIGGER or any officer, agent, or employee of a member of DIGGER, shall be limited to claims arising as a result of any negligent acts or

omissions of the City or its officers, agents, or employees, or arising out of any negligent operation of the City's underground facilities.

(b) Subsection 10-21-100(a) shall not be construed to create any additional liability for the City in relation to any member of DIGGER with which the City may have entered into a franchise agreement. If the City's liability for indemnification under a franchise agreement is narrower than under this section, the franchise agreement controls.

### **10-21-110 Penalties.**

(a) Except for the City of Chicago, its departments, and its employees acting in their capacities as such, persons who violate this Chapter shall be subject to the following penalties:

(1) A person who violates Section 10-21-040 shall be subject to a penalty of \$100. Each day that a person is required, but fails, to maintain membership in DIGGER constitutes a separate violation of that section.

(2) A person who violates Section 10-21-050 shall be subject to a penalty of not less than \$1,000 nor more than \$5,000 for each separate offense. Any person who commits three or more such violations within any 12-month period shall be required to satisfy training requirements established by the Commissioner.

(3) A person who owns or operates an underground facility or an underground location service who violates Section 10-21-060 shall be subject to a penalty of \$1,000 for each separate offense. No such person shall be subject to a penalty where a delay in marking or a failure to mark or properly mark the location of an underground facility is caused by conditions beyond the reasonable control of such owner or operator. Any person who commits three or more such violations within any 12-month period shall be required to satisfy training requirements established by the Commissioner.

(4) A person who violates Section 10-21-070 shall be subject to a penalty of not less than \$1,000 nor more than \$5,000 for each separate offense.

(5) A person who violates Section 10-21-080 shall be subject to a penalty of \$1,000 for each separate offense, and may be further sanctioned according to the following schedule:

- (A) For the first incident, the City may issue a formal warning to the responsible person.
- (B) For the second incident, the City may order the responsible person to satisfy training requirements established by CDOT.

- (C) For the third incident, the City may fine the responsible person up to \$1,500.
- (D) For the fourth incident, the City may fine the responsible person up to \$3,000.
- (E) For the fifth and each subsequent incident, the City may fine the responsible person up to \$3,500 for the fifth incident, and to increase the fine in increments of \$500 per additional incident, up to a maximum of \$10,000.

(b) Any training requirements ordered shall be completed within 60 days of the order. Failure to satisfy the training requirements within the required time period is a violation of this subsection and will result in a fine of \$50 per day for each day the violation continues. Proof of said training must be transmitted to the Commissioner within 30 days of the completion of the training. In the event that an individual fails to get the ordered training, the Commissioner may institute an administrative enforcement action against the individual.

**10-21-120 Emergency telephone system outages; reimbursement.**

Any person who negligently damages an underground facility causing an emergency telephone system outage must reimburse the public safety agency that provides personnel to answer calls or to maintain or operate an emergency telephone system during the outage for the agency's costs associated with answering calls or maintaining or operating the system during the outage.

**10-21-130 Chicago Underground Facilities Damage Prevention Fund.**

There is hereby created in the City budget a special fund to be known as the Chicago Underground Facilities Damage Prevention Fund. All fines collected pursuant to Section 10-21-110(a)(5) shall be deposited into this fund, and distributed as a grant to DIGGER, for use in safety and informational programs designed to reduce the number of incidents of damage to underground facilities in Chicago. The Commissioner shall have the authority to administer this fund, and shall provide an accounting to the Evaluation Panel on a biannual basis.

**ARTICLE III. COMPLIANCE AND ENFORCEMENT**

**10-21-210 One-Call Adjudicatory Process.**

Compliance with this Chapter shall be enforced through the One-Call Adjudicatory Process as provided for in this Article.

The provisions of Division 2.1 of Article 1 of the Illinois Municipal Code, 65 ILCS 5/1-2.1-1 *et seq.*, are hereby adopted and incorporated into this chapter as if fully set forth herein.

### **10-21-220 Powers and duties of the Commissioner.**

The Commissioner of Transportation shall act *ex officio* as the Director of the One-Call Adjudicatory Process, and in his discretion may appoint a designee to carry out those powers and duties. The powers and duties of the Director shall include:

- (a) directing the management and structure of the One-Call Adjudicatory Process;
- (b) appointing and removing Administrative Law Officers, as necessary;
- (c) promulgating rules for the conduct of administrative adjudication proceedings within the One-Call Adjudicatory Process;
- (d) monitoring and supervising the work of the Evaluation Panel;
- (e) issuing determinations as to liability after receipt and review of reports and recommendations from the Evaluation Panel;
- (f) issuing discipline to CDOT employees found liable for violations of this Chapter and issuing recommendations of discipline to the relevant department head whose employees are found liable for violations of this Chapter; and
- (g) establishing rules for the proper administration and enforcement of the One-Call Adjudicatory Process.

### **10-21-230 Evaluation Panel.**

(a) The Director shall establish an Evaluation Panel comprising the following eight members, appointed by the Director: one member representing DIGGER; one member representing CDOT; one member representing the City of Chicago Department of Water Management; one member representing a non-governmental pipeline owner and operator; two members representing other non-governmental underground facility owners and operators; and two members representing the Greater Chicago Damage Prevention Council. In the initial group of appointees, four shall serve three-year terms and four shall serve two-year terms. Each subsequent appointee shall be chosen by the Director with the advice of the Panel members, and shall serve a two-year term, unless dismissed by the Director for cause. The Director shall have the authority to fill any vacancy on the Panel for the unexpired portion of the vacating member's term. The City shall provide staff support and meeting space to the Evaluation Panel.

(b) The Evaluation Panel shall consider all Administrative Notices of Violation issued under this Chapter, as well as any reports, position statements, and evidence transmitted with the Administrative Notice of Violation. For each Administrative Notice of Violation, the

Evaluation Panel shall issue a recommendation with stated reasons advising whether the Director should find violations of this Chapter and impose penalties and sanctions on any of the relevant persons.

(c) The members of the Evaluation Panel shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of the Panel, unless the act or omission was the result of willful and wanton misconduct.

#### **10-21-240 Administrative Law Officers.**

(a) Each Administrative Law Officer appointed by the Director shall be an attorney admitted to the practice of law in the State of Illinois for at least three years.

(b) Prior to conducting any administrative adjudication proceeding, an Administrative Law Officer shall have successfully completed a formal training program, approved by the Director, which includes the following:

- (1) instruction on the rules of procedure of the administrative hearings which he will conduct;
- (2) orientation to each subject area of the code violations which he will adjudicate;
- (3) observation of administrative hearings; and
- (4) participation in hypothetical cases, including ruling on evidence and issuing final orders.

(c) An Administrative Law Officer shall hear all motions to review final decisions of the Commissioner. The Administrative Law Officer shall conduct a review hearing of the Administrative Notice of Violation. The Administrative Law Officer shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power to:

- (1) hold conferences for the settlement or simplification of the issues;
- (2) administer oaths and affirmations;
- (3) hear testimony;
- (4) rule upon motions, objections, and the admissibility of evidence;
- (5) subject to the restrictions contained in Section 10-21-300, at the request of any party or on the Administrative Law Officer's own motion, subpoena

the attendance of relevant witnesses and the production of relevant books, records, or other information;

- (6) preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
- (7) regulate the course of the hearing in accordance with this chapter, the rules adopted by One-Call Adjudicatory Process for the conduct of administrative hearings, or other applicable law;
- (8) issue a final order which includes findings of fact and conclusions of law; and
- (9) impose penalties and fines and issue orders that are consistent with applicable code provisions and assess costs upon finding a party liable for the charged violation; provided, however, that in no event shall the Administrative Law Officer have the authority to impose a fine in excess of \$50,000 exclusive of costs of enforcement or costs imposed to secure compliance with this Code.

**10-21-270 Inspection; Administrative Notice of Violation; Pre-payment.**

(a) The Commissioner shall empower one or more inspectors of CDOT to investigate work sites and claims of violations of this chapter. At an inspector's request, all parties shall cooperate and turn over to the inspector requested information such as, but not limited to, work sheets, photos, permits, reports, and make available relevant personnel to help in his investigation. All facts that parties wish to be considered by the Evaluation Panel shall be turned over to the inspector during his investigation.

(b) When a potential violation of this Chapter is revealed by inspection or investigation, the Commissioner or inspector may issue an Administrative Notice of Violation to parties who may be in violation of this Chapter.

- (1) No action may be brought unless commenced within the 24-month period following the date of alleged violation.
- (2) The Administrative Notice of Violation shall be issued in compliance with the notice provision of Section 10-21-280(b).
- (3) Copies of all evidence the Commissioner plans on providing to the Evaluation Panel in support of the existence of violation shall be mailed with the Administrative Notice of Violation.

(c) A person to whom an Administrative Notice of Violation has issued may, within 21 days of issuance, pay the indicated fine, if available. If the fine is not paid within that period, or if advance payment is not available, the Administrative Notice of Violation will go to the Evaluation Panel for review.

(d) Within 30 days after an Administrative Notice of Violation has issued, the respondent may file a defense in the form of a position statement with the inspector for transmission to the Evaluation Panel. The position statement may include as exhibits all relevant briefs, affidavits, permits, photos, reports and worksheets.

**10-21-280 Notice.**

(a) Before any administrative adjudication proceeding may be conducted under this Article, the parties shall be afforded notice in compliance with this section.

(b) A CDOT inspector shall notify potential respondents that he has begun an investigation, the subject matter of his investigation, and their responsibilities to preserve and produce evidence in relation to that investigation.

(c) The issuer of an Administrative Notice of Violation shall specify on the notice his name and badge number; where known, the name and address of the person charged with the violation; the date and place of the violation; and the section of the Code or rule which was allegedly violated; and shall certify the correctness of the specified information by signing his name to the notice. The notice shall indicate whether the matter may be prepaid. The notice shall inform the respondent of what may be submitted to CDOT prior to the review of the Administrative Notice of Violation by the Evaluation Panel.

(d) A respondent who timely requests a review of a Commissioner's decision shall be provided with a Notice of Hearing prior to the hearing before the Administrative Law Officer. A Notice of Hearing shall include the date, time, and location of the hearing and the penalties for failure to appear at the hearing before the Administrative Law Officer. A Notice of Hearing shall be served upon the alleged violator no less than seven calendar days prior to the date of the hearing:

- (1) by first class or express mail or by overnight carrier at the address on record with DIGGER; or
- (2) if the location of the alleged violation is within the scope of a permit, then the address on the permit issued for work at that location; or
- (3) to the alleged violator's residence address or, if the alleged violator is a business entity, at any address identified for its registered agent or at its place of business; or



- (4) by personal service, including personal service upon an employee or agent of the alleged violator at a place of business of the alleged violator or otherwise if such service is reasonably calculated to give the alleged violator actual notice.

(e) In all non-emergency situations, if requested by the respondent, the respondent shall have at least 15 days after the date of mailing or other service of a Notice of Hearing to prepare for a hearing. For purposes of this section, “non-emergency situation” means any situation that does not reasonably constitute a threat to the public interest, safety or welfare.

**10-21-290 Recommendation, decision, and request for review.**

(a) The Evaluation Panel shall consider all Administrative Notices of Violation brought before it. It shall also consider any evidence in support of the Administrative Notice of Violation provided by the inspector including, but not limited to, reports, permits, photos, work sheets, affidavits, and statements in support of positions. When at all possible, all Administrative Notices of Violation which regard a worksite shall be considered together to avoid piecemeal adjudication. Any panel member whose company or department is cited shall remove himself from consideration of that citation. After consideration of the evidence, the Evaluation Panel shall decide whether liability should be assessed, and, if so, determine an appropriate sanction, all of which it shall recommend to the Commissioner.

(b) Within 30 days of receipt of the Evaluation Panel’s recommendation, the Commissioner shall review the Evaluation Panel’s recommendation and the record and determine whether to issue a finding of liability and, in the case of a finding of liability, what sanctions to impose. The Commissioner shall issue a final decision accepting, rejecting, or otherwise modifying the Evaluation Panel’s findings and recommendations. The Commissioner shall provide the respondent notice of the decision, as well as notice of the right to request review of the decision by filing with the Commissioner a written request for review within 30 days of issuance of the notice.

(1) If no request for review is made within this time, any fine, other sanction or costs imposed by the Commissioner’s order that remain unpaid shall be a debt due and owing the city for purposes of Section 1-20-090 and, as such, may be collected in accordance with applicable law. Unless stayed by a court of competent jurisdiction, the findings, decision and order of the Commissioner may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(2) If the person files a timely request for review, and

- (A) the person is not the City, one of its departments, or an employee of the City, then the Commissioner shall convene a review hearing.

- (B) the person is the City, one of its departments, or an employee of the City, then the Commissioner shall transmit to the head of the relevant City department a copy of the Administrative Notice of Violation and the determination of liability, and request disciplinary action. The appropriate commissioner shall provide a response describing any such action taken. This response shall be provided to the Commissioner within 30 days after receipt of the disciplinary recommendation. The Commissioner shall retain on file a copy of each notice transmitted pursuant to this subsection, as well as each corresponding response. Any appeal from a finding of liability to an employee shall in accordance with any applicable collective bargaining agreement. Review by the Administrative Law Officer is not available for represented employees.

**10-21-300 Subpoenas.**

(a) The Administrative Law Officer may issue a subpoena only if it determines that the testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is:

- (1) relevant to the case; and
- (2) relates to a contested issue in the case.

(b) A subpoena issued under this Chapter shall identify:

- (1) the person to whom it is directed;
- (2) the documents or other items sought by the subpoena, if any;
- (3) the date for the appearance of the witnesses and the production of the documents or other items described in the subpoena;
- (4) the time for the appearance of the witnesses and the production of the documents or other items described in the subpoena; and
- (5) 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 days after service of the subpoena.

### **10-21-310 Review hearings.**

(a) When a respondent timely requests a review of a decision by the Commissioner, it shall receive a hearing consistent with this Chapter.

(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 One-Call Adjudicatory Process for such purpose.

(c) The Administrative Law Officer may grant continuances only upon a finding of good cause.

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

(e) No new documents may be introduced before the Administrative Law Officer which were available to the parties prior to review of the Evaluation Panel.

(f) The Administrative Law 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 Section 10-21-300.

(g) Subject to subsection (i) of this section, the Administrative Law Officer may permit witnesses to submit their testimony by affidavit or by telephone.

(h) The formal and technical rules of evidence shall not apply in the conduct of the hearing. 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.

(i) The Administrative Law Officer shall give deference to the Evaluation Panel's findings of fact and the Commissioner's decision. The Administrative Law Officer shall take *de novo* consideration as to the weight of the testimony and credibility of the witnesses. The party who seeks review of the Commissioner's decision has the burden to establish that the decision was clear error, meaning that the panel must be firmly convinced that a mistake was made in the Commissioner's decision.

(j) Upon the timely request of any party to the proceeding, any person, who the Administrative Law 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) Upon conclusion of a hearing, the Administrative Law Officer shall issue a final determination affirming or reversing, in whole or in part, the Commissioner's decision. Upon issuing a final determination of liability the Administrative Law Officer may modify the Commissioner's decision accordingly, provided that the Administrative Law Officer's decision

is consistent with this Chapter 10-21. It may also assess costs reasonably related to instituting the administrative adjudication proceeding; provided, however, that in no event shall the Administrative Law Officer have the authority to impose a fine in excess of \$50,000.00 exclusive of costs of enforcement or costs imposed to secure compliance with this Code.

- (l) The record of all hearings before the Administrative Law Officer shall include:
  - (1) a record of the testimony presented at the hearing, which may be made by tape recording or other appropriate means;
  - (2) all documents presented at the hearing;
  - (3) a copy of the administrative notice of violation;
  - (4) a copy of the Evaluation Panel's findings of fact and recommendation;
  - (5) a copy of the Commissioner's decision;
  - (6) a copy of the notice of hearing; and
  - (7) a copy of the findings and decision of the Administrative Law Officer.

**10-21-320 Default.**

(a) If at the time set for a hearing the respondent or his attorney of record fails to appear, the Administrative Law Officer may find the respondent in default, terminate the proceedings, and revert to the decision of the Commissioner. A copy of the order of default shall be served in any manner permitted by Section 10-21-280(c).

(b) A respondent who is found to be in default may petition the Administrative Law Officer to set aside the order of default and set a new hearing date in accordance with Section 10-21-330.

**10-21-330 Petition to vacate default order.**

The Administrative Law Officer may vacate any order 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 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 petitioner was not provided with proper service of process. If the petition is granted, the order shall be vacated and the Administrative Law Officer shall proceed with a new hearing on the underlying matter as soon as practical.

**10-21-340 Violations of orders.**

- (a) A person violates this section if he:
  - (1) is provided with notice and an opportunity to be heard under this Code; and
  - (2) knowingly fails to comply with an order issued by the Commissioner or the Administrative Law Officer under this Chapter, including any requirement of a subpoena.

Each day that the violation occurs shall be considered a separate and distinct offense.

- (b) It is not a defense to this section that a person:
  - (1) came into compliance or attempted to come into compliance with the order after the date upon which the order, by its terms, required compliance; or
  - (2) sought judicial review of the order but failed to obtain a stay of the order prior to the date upon which the order, by its terms, required compliance.
- (c) Sentence. A person convicted under this section shall be punished by:
  - (1) a fine of not less than \$200.00 and not more than \$500.00 for each offense;
  - (2) incarceration for not more than 180 days for each offense; and/or
  - (3) an order to perform community service for a period not to exceed 200 hours for each offense.
- (d) The corporation counsel shall institute actions under this section in a court of competent jurisdiction.

**10-21-350 Review under the Administrative Review Law.**

Any final decision by the Administrative Law 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.

**10-21-360 Enforcement.**

- (a) Any fine, other sanction or costs imposed by order of the One-Call Adjudicatory Process that remains unpaid after the exhaustion of, or the failure to exhaust, judicial review

procedures shall be a debt due and owing the City and, as such, may be collected in accordance with applicable law.

(b) After the expiration of the period in which judicial review may be sought, unless stayed by a court of competent jurisdiction, the findings, decision and order of the One-Call Adjudicatory Process may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(c) In any case in which a respondent fails to comply with an order of the One-Call Adjudicatory Process imposing a fine or other sanction as a result of a code violation, any expenses incurred by the City to enforce the order of the One-Call Adjudicatory Process, including but not limited to, attorney's fees, court costs, and costs, after they are fixed by a court of competent jurisdiction or an Administrative Law Officer shall be a debt due and owing the city. The matter may be enforced in the Department of Administrative Hearings under Section 2-14-103.

(d) Nothing in this section shall prevent the City from enforcing or seeking to enforce any order of the One-Call Adjudicatory Process in any manner which is in accordance with applicable law.

**10-21-370 Interest.**

Except as otherwise provided by law, interest on any debt due and owing shall accrue at the rate set for interest upon judgments.

**10-21-380 Fines payable to the Department of Finance.**

All fines and other monies paid to the City in accordance with this Chapter shall be remitted to the Department of Finance.