

9.45.060 – Commencement of action - Burden of proof

- A. At any hearing before the City's administrative hearing officer to determine whether the property in question is a chronic nuisance property, such hearing shall be conducted pursuant to provisions of this code, the City shall have the initial burden of proof to show, by a preponderance of evidence, that the property in question is a chronic nuisance property.
- B. The City's representative shall present evidence in support of its claim that the property is a chronic nuisance property. The property owner, person(s) in charge, or the person in charge's local representative, or an attorney on behalf of the responding party, shall be permitted to rebut such evidence.
- C. No continuances shall be authorized by the hearing officer in proceedings under this chapter unless for good cause shown or except where a continuance is absolutely necessary to protect the rights of the property owner, person(s) in charge, or tenant(in the event the property is a rental property), or the City. Lack of preparedness shall not be grounds for a continuance.
- D. At any time prior to the hearing date, the hearing officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence, including police reports, shall be admissible only if it is the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.
- E. At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing, whether or not a violation exists and whether or not the property is a chronic nuisance property. The determination shall be in writing and shall be designated as the findings, decisions, and order. The hearing officer's decision shall be final and binding, except that the provisions of the Illinois administrative review law shall apply with respect to judicial review of the hearing officer's findings, decision, and order. The findings, decision, and order shall include the hearing officer's finding of fact, a decision whether or not a violation exists, a determination as to whether the property in question is or is not a chronic nuisance property based upon the findings of fact, and sanctioning the person in charge/owner/tenant or occupant, as specified in subsection F of this section, or dismissing the case in the event a violation is not proved. A copy of the findings, decision, and order shall be served upon the person in charge, owner, or tenant or occupant, within fourteen(14) business days of the date of the hearing.
- F. If the hearing officer makes a finding that a property was, or is, a chronic nuisance property, the hearing officer may fine the person in charge and/or the owner, tenant or occupant of the property if those persons are different than the person in charge, an amount not to exceed seven hundred and fifty dollars(\$750.00) for each violation of this section. Each day a nuisance activity occurs or continues shall be considered a separate and distinct violation for purposes of determining a property to be a chronic nuisance property. The hearing officer may, in his or her discretion, impose such a fine for each day the nuisance activity goes unabated. No person shall be found in violation of this section unless the City proves the violation by a preponderance of the evidence.
- G. Alternative enforcement:
 - 1. Abatement of Nuisance: the City, as an alternative to administrative adjudication, may commence an action in the Circuit Court of Kane County for a determination that the property is a chronic nuisance property and/ or to abate a chronic nuisance property as described above.
 - 2. Upon being satisfied by affidavits or other sworn evidence that an alleged Chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such chronic nuisance property and may enter an order restraining any defendant from occupying, using, or interfering with all property used in connection with the chronic nuisance property.

(2016-M-56 : § 4; 2015-M-27 : § 1; 2007-M-10 : § 1)