

# ChicagoCodes Chronicle



July 2005

Dear ChicagoCodes.com Subscribers:

As we approach mid-year we are happy to report on many completed projects and inform you of the important projects we are working on for the second half of the year. We now have the **2005 Chicago Building Code**, **2005 Chicago Electrical Code** and the **2005 Energy Conservation Code** available.

We are completing work on all the town and village zoning information for **Cook County** and should have that available online by August. Also coming in August is the 2005 edition of the **Chicago Zoning Ordinance**.

We have completed changes to over 144 Zoning maps and are now current through March 2005. We will be current through May 2005 shortly. [Download Adobe Acrobat Reader 7.0 to view the maps](#)

This edition of our eNewsletter contains a new feature: an **interview with** the Executive Director of the City of Chicago Department of Construction and Permits – [Rafael Hernandez](#).

## Federal Agency seeks tougher Building Code standards.

The National Institute of Standards and Technology released a report after reviewing the collapse of the World Trade Center Towers. The report called for tougher standards for fireproofing skyscrapers and speeding evacuation procedures during emergencies. Among the specific recommendations was that stairwells be placed farther apart to better ensure at least one remains in tact after a catastrophic event. Only one of the six stairwells was passable according to the report.

The report also noted that had the towers been full instead of one-third full on 9/11, evacuation would have taken over four hours; yet both towers collapsed in less than two hours. The report recommended wider stairwells with better fireproofing and “hardened” elevators that would run even during a fire, and would transport emergency personnel up to the fire and evacuate those workers unable to use the stairs.

Locally, we are still awaiting the passage of the new life safety ordinance, though some movement may occur in August, sources at City Hall inform us. Other sections of the Building Code currently under revision include the structural and architectural sections.

*More news at [ChicagoCodes.com](http://ChicagoCodes.com).*

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## KNOW THE CODE



## Recent Changes Highlights

Through April 6, 2005 City Council Journals

### **Repeal of November 2004 Zoning Amendment**

In the March 9, 2005 Council Journal, City Council repealed the November 2004 Zoning amendment and replaced it with a corrected amendment. The corrected amendment is not intended to invalidate, alter, or otherwise affect in any way any action taken based upon the November amendment.

The reasons for the repeal and replacement of the November Amendment with the corrected amendment are: (1) to continue in effect the changes to the New Zoning Code that had been made by the November Amendment; (2) to correct the section numbering errors contained in and caused by the November amendment, and (3) to make additional changes not included as part of the November amendment.

[Click Here to see a complete list of all the Zoning Ordinance changes.](#)

### **New Planned Manufacturing Districts**

Pilsen PMD # 11

Harlem PMD #12

Greater Southwest PMD #12

### **Regulation of Drivers with cellular phones**

See **New Section 9-40-260.**

### **Storage of Hazardous Materials**

See **New Section 15-28-755.**

### **New Licensing Provisions**

See **New Sections 4-40-010 to 4-40-110.**

### **Closure Due to Hazardous Materials**

See **New Section 4-4-283.**

### **New Contract Provisions**

See **New Sections 2-92-650 to 2-92-780.**

### **Chicago Restaurant and Other Places for Eating Tax Ordinance**

**New Sections 3-30-010 to 3-30-100.**

[Click Here to view the entire Recent Changes Bulletin.](#)

## Zoning Case Law

### Billboard company may proceed with its First Amendment suit

By [LIBBY SANDER](#)

*Law Bulletin staff writer*

A federal judge greenlighted a constitutional challenge of a suburban ordinance designed to regulate the placement of signs and billboards in suburban Des Plaines.

In a 20-page opinion released Wednesday, U.S. District Judge [Joan Humphrey Lefkow](#) denied the city of Des Plaines' motion to dismiss a 14-count complaint against it. The suit, brought by Covenant Media of Illinois LLC, claimed the city's sign ordinance violated the First Amendment.

While Lefkow did not rule on the merits of the complaint, she rejected the city's contention that Covenant had failed to state a claim.

"The court defers any decision regarding the merits of these claims until a factual record is developed and substantive arguments are raised," Lefkow concluded.

Covenant, which posts and operates advertising signs and billboards used by businesses, churches, organizations and individuals, sued the city after its application to post a billboard was denied.

The company claimed the city's sign ordinance was unconstitutional for several reasons, chiefly that it gave city officials an "impermissible level of discretion" to approve or deny signs; that it was so vague

as to violate due process; that its regulations were overly broad and that it prohibited far more speech than was necessary to protect the interests of the city and its residents.

The sign ordinance, part of the city's zoning ordinance, regulates the "content, permitting, placement, number, size, height, design, operation and maintenance of signs within the city," Lefkow wrote. It also prohibits signs displaying "obscene, indecent or immoral matter."

The ordinance's stated purpose is "to preserve the noncommercial character of residential neighborhoods, to provide reasonable yet appropriate conditions for identifying businesses and services, to reduce traffic hazards, and to protect the health, safety and general welfare of the city's residents."

Covenant applied for permission to post a billboard in November 2004. The proposed sign complied with the State of Illinois' laws and regulations regarding signs, Lefkow noted. The city told Covenant its application was incomplete, and denied it three days later. If it wanted the city to reconsider the application, officials informed Covenant, the company would have to satisfy several additional requirements, including approval of the proposed site by the city's plan commission.

Covenant filed suit against the city, claiming it was unconstitutional on its face and in how it was applied to Covenant's own application. The sign ordinance is "content-based," meaning that the city looks at the content of the speech in the proposed sign to determine whether it violates a regulation, Covenant claimed.

The city, meanwhile, asserted that Covenant's application was denied solely because it was incomplete. The sign ordinance is "content neutral," not "content-based," because the purposes of the ordinance are not related to the content of the proposed signs, the city argued.

Going through the counts of Covenant's complaint one by one, Lefkow concluded that Covenant had given adequate support to each of its claims.

For example, she pointed out that city officials — including the mayor — "possess unduly broad discretion" in deciding whether to grant or deny a billboard permit application.

By lacking specific deadlines and by allowing officials to require additional information of an applicant before deciding whether to approve the petition, the city "could potentially delay the processing of certain permit applications and thereby arbitrarily suppress disfavored speech," Lefkow wrote, citing *Granite State Adver., Inc. v. City of St. Petersburg* (11th Cir. 2003).

The case is *Covenant Media of Illinois, LLC v. City of Des Plaines, Illinois*, No. 04 C 8130.

**Allegis Realty Investors, et al. v. John Lotus Novak**, No. 2-04-0379. Trial court erred in rejecting taxpayers' objection to a township road tax because the objectors raised a genuine factual issue as to whether the township road district complied with statutory petition requirements before the tax was approved at a referendum. The 2<sup>nd</sup> District Appellate Court has reversed.

**City of Chicago v. RN Realty, L.P., and Plymouth Building, L.P.**, No. 1-03-2214. Trial court correctly ruled that the City of Chicago is not due violation fees for building violations that did not endanger the public and were fixed promptly and in good faith. Illinois Appellate Court, 1<sup>st</sup> District, 4<sup>th</sup> Division affirmed.

**Everett Olmstead v. Merlin Nodland**, No. 3-04-0413. Trial court correctly held that farmland lease between life tenant and lessee terminated at the end of the lease term because the life tenant died and the applicable statute provides that such a lease term terminates at the end of the current lease year in which the life tenant's interest terminates. The 3<sup>rd</sup> District Appellate Court has affirmed.

[Click Here for more details on these cases and other Zoning and Land Use Case Law.](#)

**RAFAEL HERNANDEZ, EXECUTIVE DIRECTOR**  
CITY OF CHICAGO DEPARTMENT OF CONSTRUCTION AND PERMITS



On April 7, 2004, Mayor Daley named Rafael Hernández as Executive Director of the Department of Construction and Permits. Hernández brings both an architectural and private sector background to his daily responsibilities and to meet his goals for the department. Those goals are significant and will improve the entire permit process for all city departments and their clients. Hernández is always wearing his customer service hat, focusing on improving the permit process and experience. He even assisted a client during our interview. Mr. Hernández was open, honest, personable, and equipped with a good sense of humor necessary in his position. Index was fortunate to catch up with Hernández to discuss his role and the future of DCAP.

**What are some of your prior jobs and how have they prepared you for this job?**

I've had a good mix of responsibilities – an architectural education, working in the field, running some jobs working with tradesmen, which included estimating and ordering materials.

Then, I moved to the business side as the Executive Director of the Hispanic American Construction Industry Association (HACIA) where I served 5 years as a project manager and 5 years as Executive Director. I learned the other side of the industry and what business challenges arise working in the private sector and the public sector.

I was managing the various responsibilities of an office including inside employees as well as how to market the over 230 members of the association.

So, I've been able to see everything as an architect, in the field, what the realities are for businesses and their challenges, and now I am on the other side in government.

**What drew you to this position?**

The opportunity to work for a Mayor such as Mayor Daley is very challenging, and I am grateful for the opportunity to do this and contribute to the general public.

**What is the nature and scope of your job?**

The day-to-day operations, the policy, and the challenges of an operation with over 100 people.

The biggest challenge we have is to issue the permits and how long it takes to get through the system. It is customer assistance; we are a customer service oriented department.

We also are a very transparent department, because you know what the performance of the department is every inch of the way. There is nothing you can hide here. Through technology you know when your appointment is, where your permit is, whether it is moving or not, and ultimately, how long it will take to obtain a permit.

### **What are your duties?**

Permit issuance; the management of staff and satellite offices; new initiatives; answering people who want to know why their permit is not moving or why they are not getting a permit.

It is making sure that we're doing what we're supposed to be doing and we're focused on issuing permits and nothing else.

### **What are the goals for DCAP?**

One of the directives I have is the consolidation of DCAP. Previously, when you got a permit you went to the 9<sup>th</sup> floor to get a piece of the permit and then elsewhere for the remaining pieces. We have begun the consolidation and are about 80% complete.

The fire reviewers are under our budget, also the Mayor's Office for People with Disabilities, we're bringing in the driveway permits, forestry, and the last one is the water management. It is a matter of space now. It is necessary for the department to become one authority to better serve its clients.

Second, technology is a big factor in improving the permit process. We are one of the first cities to allow you to fill out the application online. So when you come for an appointment the application is already filled out, and all we have to do is check the information versus when you come in with a piece of paper and our office managers have to transfer that information to the system – that is not efficient.

### **What challenges is DCAP facing?**

Manpower to staff the office is always a challenge. We have a set amount of staff, and the market needs change – you have two seasons in Chicago, winter and summer. The challenge is finding the flexibility in the department to handle the needs outside for the permits that come in.

People and focusing them on issuing permits can be a challenge, especially with all the activity in other departments. Facilitating the process for the client, getting rid of barriers, getting rid of the bureaucracy, ultimately looking at existing ordinances and whether they need to be changed, and how our system impacts the public and how to change it to better serve them.

### **What is the greatest reward of your job?**

The biggest reward is being able to service the City of Chicago as a director.

As a director, I deal with owners of companies to aldermen to homeowners

– my door is open. If somebody has a question about a permit, or how their permit is being handled, or the fact that they need direction – that door is open to everybody. No matter what your title is we will talk to anybody.

### **What is your proudest moment on the job?**

The ability to help people through the process.

### **What is your favorite thing about the job?**

Service to the people.

### **Tid-Bits**

#### **Favorite quote**

“Never say never.”

#### **Favorite magazines**

Crain's Chicago Business

#### **What do you do during your time off?**

I have a family with three kids, (wife Carmen, and children Christian, Alejandra, and Andrea), and spend as much time off with them as possible.

#### **Favorite sports team**

I enjoy watching both the Cubs and Sox.

#### **Stay home to watch**

I like Orange County Choppers, a show about building motorcycles. Also, the home repair and car repair shows.

#### **Favorite song**

Los Lonely Boys – “Heaven”

**What is your relationship with the Mayor and the other departments? And how has that impacted your job?**

I've had a very positive relationship with the Mayor in reference to the leadership of this department, and he has been supportive of this department and our needs. When I see the Mayor I tell him: here are our accomplishments, here are our challenges and here are our needs. I've been very gratified with that relationship. I've learned a lot from Mayor Daley and from his direction of the City's growth.

With regard to the other departments, I talk to as many departments as possible. We look at the type of permit being issued and the constraints the permit has or the challenges. Whether it is zoning or planning or building – we have to have a good relationship.

We have to talk to know how we interrelate with each other. Buildings department serves as our eyes and they tell us what is going on.

We currently do some zoning review. In order to facilitate the process, when a project comes in and it conforms to the current zoning of that area, or that address, then we proceed with the review. If not, then it is submitted to the Department Zoning for further review or the Zoning Board of Appeals.

**What advice would you give to an incoming commissioner?**

To be as open as possible with everybody and the rest of the commissioners. Be yourself.

**Update Your Acrobat Reader to 7.0**

You may have experienced an “Out of memory” error when opening the Zoning maps in Acrobat Reader. Acrobat appears to have solved this problem with the latest version of the Reader 7.0.

[Click here to download the latest version.](#)



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