

Chapter 2.5 CODE ENFORCEMENT BY ADMINISTRATIVE ADJUDICATION

ARTICLE I. IN GENERAL

Sec. 2.5-1. Authorization and establishment.

- (a) Pursuant to the applicable provisions of R.S. 13:2575 and all other applicable statutes, ordinances, rules and regulations, a procedure for administrative adjudication and position of administrative hearing officer(s) are hereby established.
- (b) Hearing officers who have been duly appointed and sworn in, in accordance with the provisions of this sub-chapter, shall have the authority to hear and decide any alleged public health violation, housing violation, which shall also encompass the terms and applicable provisions of R.S. 14:107.3, building codes, zoning, vegetation, and nuisance ordinances, fire code violation, violation of environmental regulations, historic district ordinance violations, any matters involving alleged licensing and permit violations, and any other ordinance violations that may be determined by the parish council pursuant to the procedures for administrative adjudication established in the sub-chapter.

(Ord. No. 16-14, 4-12-2016)

- (c) The hearing officer and any employee charged with the enforcement of this code shall not be rendered personally liable for any damage that may occur to persons or property as a result of any act in the discharge of official duties. The hearing officer or any employee thereof shall not be liable for costs in any action, suit, or proceeding that is instituted in pursuance of the provisions of this code.

Sec. 2.5-2. Definitions.

The following definitions shall apply in the interpretation of this sub-chapter. Whenever applicable, the terms used herein may be used interchangeably. The intent and spirit of these definitions is to include everyone and everything that is related to these definitions and the properties so affected:

Decision or *order* shall mean an administrative act of the administrative hearing officer under authority of this sub-chapter.

Director shall mean the head of a parish agency or department that enforces any public health, housing, fire code, environmental regulation, historic district ordinance, any matters involving licensing and permit violations, and any other ordinance violations that have been determined by the St. John the Baptist Parish Council.

He, him, her, and she shall be deemed to be interchangeable; it is understood that the masculine and feminine of any word is likewise interchangeable.

Immovable property shall mean any unimproved land, any improved land, and any buildings, structures or other things, of whatever nature or description, which are permanently attached to such land, and anything which is otherwise defined as immovable by law.

Interested person shall mean and be deemed to include any person with an interest in this process.

Licensee shall mean and be deemed to include any person to whom a parish license or permit of any kind has been issued and/or sought by such person.

Movable property shall mean property that is not defined as immovable, or property that is otherwise defined as movable by law.

Occupant shall mean and be deemed to include any person occupying immovable property by permission or accommodation of the owner, former owner, lessor, lessee, tenant or another occupant.

Officer shall mean the administrative hearing officer.

Owner shall mean and be deemed to include any person who possesses an interest in immovable property located in St. John the Baptist Parish; such interest may or may not be recorded on the public records.

Parish shall mean St. John the Baptist Parish inclusive of the office of the parish president.

Permittee shall mean and be deemed to include any person who has sought and/or been granted permission to act or take action and which is ordinarily derived from the granting of a permit.

Person shall mean and be deemed to include any individual, and any legal entity, with the power to sue or be sued, and any person or entity with the power to own, alienate and/or encumber immovable property; shall be deemed to include any individual, entity or being, capable of being sued or capable of bringing suit.

Property means movable and immovable property.

Registration and *license* may be used interchangeably.

Respondent or *alleged violator* shall mean any person or entity, including any landowner, occupant, tenant, lessee, lessor, and/or the authorized representative of any such person or entity who had been given a notice of violation under this chapter.

Tenant shall mean and be deemed to include any person who rents, uses, or otherwise occupies a building, structure or property owned or leased by another.

Violation shall encompass all ordinances, including but not limited to building codes, zoning, planning, vegetation, housing, blighted properties, dangerous structures and nuisance ordinances. *Violator* shall mean a person who has been found liable for a violation or ordered to correct a violation in an order issued under this chapter.

Sec. 2.5-3. Inclusion and adoption of all existing sections and subsections of this Code.

- (a) It is the intention of the parish to adopt and include, interchangeably, all rules, regulations, fines and penalties of the Code of Ordinances (including but not limited to any amendments thereto and supplements) to the extent that the parish has the authority to initiate investigations, investigate, refer matters to additional agencies or departments, and otherwise fully participate in any and all regulatory matters of the parish and all ordinances that may hereinafter be adopted.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-4. Referral for disposition.

- (a) The parish enforcement inspectors shall be specifically vested with the right to exclusively refer matters to the office of the district attorney and/or the administrative hearing officer on a case-by-case basis as exclusively determined by the parish.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-5. Conflicts.

- (a) It is the intention and desire of this council to supersede and replace all such provisions where there exists any conflict.
- (b) Where there exists any conflict, the more restrictive provision shall apply, all at the sole discretion and interpretation of the administrative hearing officer.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-6. Hearing officer(s).

- (a) Hearing officer(s) shall be appointed by the district attorney's office and shall serve at the pleasure of the district attorney.
- (b) All hearing officers shall be sworn before the District Attorney to uphold the Constitution of the United States, the laws and Constitution of the State of Louisiana, and the Charter and ordinances of the parish, and to abide by the provisions of the Louisiana Code of Governmental Ethics before assuming office.
- (1) A hearing officer shall be an attorney licensed to practice law in the State of Louisiana.
- (2) A hearing officer shall be an attorney in good standing with any and all courts of this state.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-7. Power of the Hearing Officer

The hearing officer shall have all power and authority set forth in the applicable provisions of R.S. 13:2575, the provisions of R.S. 14:107.3, all other applicable state laws and regulations, and the following nonexclusive powers to:

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- (1) Administer oaths and affirmations;
 - (2) Issue orders, including the declaration and certification set forth in R.S. 14:107.3, and/or administrative subpoenas compelling the attendance of witnesses, respondents, alleged violators and violators and the production of documents;
Determine whether or not an alleged violator is liable for code violations.
 - (3) Levy fines, fees, penalties, and hearing costs including, but not limited to, the levying of fines and costs associated with the removal and/or securing of dangerous structures as authorized and provided for in LA RS 33:4754.
 - (4) Order the repair, restoration, remediation and/or correction of any violation correct violations within a stipulated time;
 - (5) Take any and/or all necessary and lawful measures to effect corrections of the violation if the violator fails to do so within the time allocated by the hearing officer;
 - (6) To place, or cause to be placed, liens against the immovable property located within the parish in or on which the violation occurred, if the violator fails to remit payment for any cost and/or fines, within 30 days of the levy of the same;
Record orders, judgments, notices of judgments, or liens in the mortgage office.
 - (7) Take such actions as are necessary to protect the safety, health and welfare of the citizens and property of this parish; and
 - (8) Assume such inherent powers as are necessary to protect the safety, health and welfare of the citizens and property of this parish.

Sec. 2.5-8. Costs, fines and penalties.

- (a) The officer shall have the exclusive authority to assess and levy the following fines, penalties and administrative costs.
- (b) Such costs, fines and penalties as may be assessed are separate and distinct from that which may be determined and assessed by any court of competent jurisdiction.
- (c) Costs.
 - (1) The officer shall assess costs of any proceeding when there is finding of a violation.
 - (2) Administrative costs are mandatory and may not be waived or reduced by the officer when determined that the respondent has violated any section of the parish ordinances.
 - (3) Administrative costs shall not be less than \$100.00, but may include the additional tabulation of reasonable out-of-pocket costs expended by the parish (i.e. postings or advertisement, postage, photographs, video, related office expenses, subpoena service charges, expert fees, consultant fees, professional service expenses, attorney fees, cost of engineering and other technical services and studies as may be required and such other reasonably related expenses) necessary to prosecute a matter.

- (4) Additional administrative costs may be assessed against the respondent by the officer to include reimbursement to the parish for employee time expended to prosecute a matter.
- (5) Enforcement costs that may be recovered and enforced against a violator include but are not limited to: the Parish's direct cost for abatement, costs of salary and all applicable overhead of Parish staff and contract personnel involved in the investigation, enforcement, and/or remediation or abatement of a violation, Parish costs for equipment use or rental, costs of monitoring programs necessary for correcting, monitoring, abating or mitigating violations, any other fee, cost, or expense reasonably and rationally related to the Parish's enforcement action(s) to bring violation(s) into compliance or to abate and/or correct a violation of local, state or federal law.
- (d) Fines and penalties. Fines and penalties may be assessed up to \$500.00 per violation and up to \$500.00 per day for continuing violations.

Sec. 2.5-9. Movable.

Where there exists a violation of any ordinance and the matter involves a movable susceptible of seizure, the officer shall have the authority to issue such seizure orders as are necessary to seize and take control of such movable property for safekeeping, retention purposes or disposal, all as permitted in law.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-10. Separate offense.

- (a) It shall be the authority of the officer to assess and levy a separate fine and/or penalty to any respondent for each offense committed in violation of parish ordinances.
- (b) For each day a violation occurs, the same shall constitute a separate offense regardless of whether such violation is of a continuing nature.
- (c) Unless otherwise precluded by local, state or federal law, there shall now be no limit on the aggregate of any assessment, fine or penalty.

Sec. 2.5-11. Multiple/repeat offenses.

- (a) Within one year of a final determination by the officer that a respondent has violated an ordinance that the respondent is cited for the same or similar violation of the parish ordinance, the officer is authorized to then assess and levy up to and including twice or double the fine and/or penalty.
- (b) After the first year, and in the event of repeated violations thereafter, the officer may assess and levy triple or three times the fine and/or penalty.
- (c) In the event that a respondent violates any ordinance more than three times within a three-year period, then the officer, in his discretion, may assess and levy such fines or penalties as may be warranted under the circumstances and allowed as per law.

Sec. 2.5-12. Authority to suspend, revoke, rescind applications and permits.

- (a) The officer shall have the authority to suspend, revoke and/or rescind any permit issued by the parish for any reason.
- (b) In the case of suspension of a permit, the officer shall have the authority to a respondent to comply with any and all ordinances so affected.
- (c) The officer shall have the authority to rescind and revoke any application made to the parish.

Sec. 2.5-13. Exemptions.

There is no intent to create nor are there any known exemptions to these violations, penalties, rules or regulations.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-14. Community service.

Where not precluded at law, the officer shall have the additional authority and power to order community service, at his discretion, commensurate with the penalties herein.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-15. Schedule of costs, fines, penalties.

Schedules of costs, fines and penalties are those referenced in the Code of Ordinances.

Sec. 2.5-16. Notification procedures.

- (a) *Mailed notification.*
 - (1) *Minimum 30 days.* Prior to holding an administrative hearing for any violation set forth herein, and any other ordinance violations that may be determined by the parish council, the parish agency or department having enforcement responsibility shall notify the property owner and each mortgagee of record in the parish mortgage records, , at least 30 days in advance of the date that such a hearing is scheduled.
 - (2) *Contents and specifications.* The notification shall state the time, date and location of the hearing, and state the alleged violations; and it shall be sent by certified or registered U.S. mail to the owner or personally served on the owner and on each mortgagee of record at the address provided in the recorded mortgage. The date of the postmark shall be deemed to be the date of delivery.
 - (3) *Fulfillment.* Any notification so sent and returned by U.S. Post Office shall be considered as having fulfilled the notification requirement. Proof of notification via mail, posting of notices and attempts at service shall be entered in the record of each case prior to the hearing.
- (b) *On-site notification.*

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- (1) *Minimum five days.* In addition to the mail service required by subsection (a) of this section, if a violation relates to immovable property, a copy of the notice shall be affixed in a prominent location on the property on which a violation is alleged, or if safe access to the property is not reasonably practicable, on some prominent fixture on the adjacent public right-of-way as near as possible to the property, at least five (5) days in advance of the date of the hearing. It shall be unlawful for any person other than an agent of the parish to remove such notice posted on the public right-of-way prior to the commencement of the hearing.
 - (2) *Contents.* The notice of violation shall be, as much as possible, in laymen's language susceptible of understanding by a person of normal capacity, and shall, in large print, inform the person noticed of the need to appear at the hearing and the risk of penalties and liens which may be imposed.

Sec. 2.5-17. Hearing practices and procedures.

- (a) *Attendance.*
 - (1) *Alleged violators.* If the alleged violator does not appear at the scheduled hearing, the hearing officer may proceed with the hearing or may issue a subpoena for the alleged violator that may be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least 18 years of age.
 - (2) *Witnesses.* Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required according to the rules of the Administrative Procedures Act Title 49.
 - (3) *Enforcement.* Any order compelling the attendance of witnesses or the production of documents may be enforced by the 40th Judicial District Court of St. John the Baptist Parish or by any other court of competent jurisdiction, in the same manner as any subpoena in a civil matter.
- (c) *Proceedings.* Any administrative adjudication hearing held under the provisions of this chapter shall be conducted in accordance with the rules of evidence of the Administrative Procedure Act, R.S. Title 49, as may be amended from time to time. Testimony of any person shall be taken under oath and shall be recorded. The person charged with the ordinance violation may present any relevant evidence and testimony at such hearing and may be represented by an attorney at law. However, an alleged violator's physical presence shall not be required at the hearing, and a failure to appear shall not be deemed an admission under subsection (d) of this section, if documentary evidence, duly verified

by such person, is submitted to the hearing officer via the agency of the parish having responsibility for the enforcement of the code violation(s), prior to the date of the hearing. Nothing contained herein shall be construed to limit the authority or the ability of the hearing officer to determine an alleged violator's liability based solely upon submitted documentary evidence.

(d) *Determination of penalties.*

- (1) *Reasonable consideration.* In determining the amount of any fine or penalty for each violation, the hearing officer shall consider the age, financial circumstances and physical and mental capacity of the violator and the degree of hardship which the fine or penalty will impose, shall weigh those factors against the degree of culpability of the violator and the gravity of the offense, and the damage to the public health, safety, welfare, and convenience and the cost to the parish or to others occasioned by the offense.
- (2) *Calculation and deposit.* The hearing officer may, for each separate violation, order the payment of fines and hearing costs, the total of which shall not exceed the maximum which may be imposed on a misdemeanor by the courts of this parish; provided, however, that no civil fines or hearing costs imposed may exceed those specified for the criminal violation of the same ordinance. All such fines and costs shall be paid into the general fund, unless it is otherwise provided by law.

(e) *Decision.*

- (1) *Timeframe and contents.* Within five legal days, excluding legal holidays, of the close of the hearing, the hearing officer shall issue a final order, judgment, or notice of judgment. The final order, judgment, or notice of judgment shall be signed by the hearing officer, state whether or not the person charged is liable for each violation and any specific determinations thereto; any order assessed against him or her; the amount of any fine, fees, or costs and penalties assessed for each violation, the defects to be corrected and the extent by which each violation shall be corrected, repaired and/or abated; and a reasonable date by which each violation shall be corrected, repaired and/or abated, notify the violator of his right of appeal, that the city may act to abate violation(s) if the violator fails to act in accordance with the order, judgment, or notice of judgment where applicable and shall, so much as possible, conform to the stylistic and typographical requirements established for the notice of violation.
- (2) *Enforcement.* Any order assessing a fine, fees, penalties, or costs and/or stipulating a correction date may be enforced by the courts of St. John the Baptist Parish. Each day that violation(s) continue after due notice has been served shall be deemed a separate offense.
- (3) *Notice.* The final order shall be served in the same fashion as the original notice or, if the violator has counsel of record, by mailing or delivering the order to counsel.

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- (4) *Suspension.* The hearing officer, for good cause, may suspend all or a portion of his final order and may make any suspension contingent on the fulfillment of some reasonable condition.
- (f) Except as may otherwise be applicable, any criminal sanctions or other enforcement actions that may be brought, such as injunctive relief, are not affected by these provisions.

(Ord. No. 16-14, 4-12-2016)

Sec. 2.5-18. Non-exclusivity of procedures.

- (a) The procedures and remedies established by this sub-chapter shall not be deemed exclusive and may be employed in the civil enforcement of an ordinance before, during or after the employment of any other civil enforcement mechanism provided by law, or before, during or after the commencement or conclusion of enforcement action in a civil or criminal court, unless the civil courts have exonerated the alleged violator of the violation charged.

Sec. 2.5-19. Liens.

- (a) The parish shall have a lien and privilege against the immovable property in, on, or upon which violation(s) occurred. The lien and privilege shall secure all fines, fees, costs, and penalties that are assessed by the parish and described in the order, judgment, or notice of judgment and the notice or statement of costs. The recordation of the order, judgment, or notice of judgment and the notice or statement of costs in the mortgage office of the parish shall constitute a lien and privilege against the land upon which violation(s) exists.
- (b) Any lien and privilege recorded against an immoveable property under this article shall be included in the next annual ad valorem tax bill.
- (c) The parish, upon recordation of the order, judgment, notice of judgment, or lien, may:
- (1) Apply to the clerk of district court for issuance of a writ in accordance with Code of Civil Procedure Article 2253, under the authority of R.S. 13:2575 and 13:2576, upon describing with particularity the immovable property and the manner in which the writ is to be enforced; or
 - (2) Institute a suit against the owner of record in any court of competent jurisdiction to enforce the order, judgment, notice of judgment, or lien.
- (c) In order for the lien and privilege to arise, the order, judgment, notice of judgment or lien shall be final and not subject to appeal when recorded in the mortgage office.
- (d) Any monies collected pursuant to this sub-chapter shall first satisfy all outstanding municipal liens recorded against an immovable property and only when all outstanding municipal liens are satisfied in full shall monies be applied towards an immovable property's ad valorem taxes.

Sec. 2.5-20. Record requirements.

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- (a) At its commencement by notice to the alleged violator, every civil adjudication proceeding shall be assigned a docket number and a style in the form of "In the matter of" or in the form of "Parish of St. John the Baptist versus" followed by the name of the alleged violator. The records pertaining to each proceeding shall be maintained as a separate file in a manner similar to the fashion in which the clerks or court maintain the records of civil cases.
- (b) Each department or agency charged with the enforcement of an ordinance within the scope of this chapter shall maintain a log or index of all civil adjudication proceedings, which shall set forth information including but not limited to the following:
- (1) The style and docket number of the case and the date it was commenced;
 - (2) The ordinance or ordinances allegedly violated;
 - (3) The date or dates of the alleged violations;
 - (4) The address(es) or other description of the property on which the alleged violation(s) exist or have occurred;
 - (5) A statement as to whether any civil or criminal court proceedings pertaining to the alleged violations are or were pending, the dates or any hearings, trials, or continuances, and the dates of their commencement and/or termination and, if the case is terminated, of its final disposition;
 - (6) A statement as to the dates of any hearing, trials or continuances and the date of their commencement and/or termination, if the case is terminated and of any final order in the case and as to whether and when any lien was filed;
 - (7) A statement as to the date of filing and disposition of any appeal;
 - (8) The hearing officer shall review this log or index regularly to ensure that no civil or criminal remedies of the parish are permitted to prescribe.

Sec. 2.5-21. Superseding ordinance.

When the ordinance from which this chapter derives is applied, its provisions shall supersede all ordinances, or parts of ordinances, previously adopted and in conflict herewith.

Sec. 2.5-22. Appeals.

Any person determined by the hearing officer to be in violation of a public health, housing, fire code, environmental, or historic district ordinance may appeal this determination to the appropriate district court. Such appeal shall be instituted by filing, within 30 calendar days of the hearing officer's order, a petition with the clerk of court for the district court along with payment of such reasonable costs as may be required by the clerk. After filing a petition for appeal, the clerk of court of the district court shall schedule a hearing and notify all parties of the date, time, and place of such hearing. Service of notice of appeal under this subsection shall not stay the enforcement and collection of the judgment unless the person who files the appeal furnishes security prior to filing notice of appeal with the Department of Finance in the amount fixed by the hearing officer sufficient to assure satisfaction of the finding of the hearing

officer relative to the fine(s), fee(s), monetary penalty/penalties, cost(s) of the hearing, and cost(s), if any, of correcting the violation(s).

Public review draft