

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 2973 ORDINANCE COUNCIL SERIES NO. _____
COUNCIL SPONSOR MR. IMPASTATO PROVIDED BY PRESIDENT'S OFFICE
INTRODUCED BY MR. BAGERT SECONDED BY MR. IMPASTATO
ON THE 4TH DAY OF NOVEMBER 2004

ORDINANCE TO AMEND THE ST. TAMMANY PARISH CODE OF ORDINANCES, CHAPTER 1, ARTICLE I, SECTION 1, TO ESTABLISH THE BUREAU OF ADMINISTRATIVE ADJUDICATION, TO CREATE THE POSITION OF HEARING OFFICER, TO PROVIDE FOR THE POWER AND AUTHORITY OF THE ADMINISTRATIVE HEARING OFFICER, TO ESTABLISH CORRESPONDING RULES AND REGULATIONS, TO AUTHORIZE THE LEVY OF FINES, THE IMPOSITION OF PENALTIES AND OTHER REMEDIES, AND TO OTHERWISE PROVIDE WITH RESPECT THERETO.

WHEREAS, the Parish of St. Tammany desires to continue to uphold the rules, regulations and requirements of all existing Ordinances enacted by this Parish; and

WHEREAS, in an effort to alleviate the cost of extensive administrative meetings and hearings, to minimize timely and costly court appearances, to more efficiently utilize the time, effort, and expense associated with the enforcement of parish rules, regulations and ordinances, and to otherwise more efficiently and adequately protect the health, welfare and safety of the citizens of St. Tammany Parish.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS that the St. Tammany Parish Code of Ordinances, particularly Chapter 1, Article I, and any other ordinance which may be in conflict herewith, is hereby amended and reenacted to establish the Bureau of Administrative Adjudication, and the position of Administrative Hearing Officer, and pursuant to applicable provisions of La.R.S. 13:2575, La.R.S. 13:2575.2, all other applicable provisions of state law, the ordinance enacted hereby, and all other applicable authority, the Parish of St. Tammany, through the Office of the Parish President, is authorized and directed to establish the Bureau of Administrative Adjudication, and position of Administrative Hearing Officer, all in accordance with the following:

Sec. 1-012.00 BUREAU OF ADMINISTRATIVE ADJUDICATION

Pursuant to the applicable provisions of La.R.S. 13:2475, the provisions of La.R.S. 13:2575.2, and all other applicable statutes, ordinances, rules and regulations, the Bureau of Administrative Adjudication and position of Administrative Hearing Officer(s) is hereby established. Any agency or department of the Parish of St. Tammany having a responsibility for the enforcement of any public health, housing, fire code, environmental, and historic district ordinance, or any matters involving licensing and permit violations, and for any other Ordinance violations that may be determined by the St. Tammany Parish Council, may seek to affect correction of the violation and the imposition of civil fines, civil penalties, fees and hearing costs for violations of such Ordinances by the owners of movable and immovable property or their agents, tenants, representatives, licensees, permittees or any other interested party pursuant to the procedures for administrative adjudication established in the sections of this Chapter.

Sec. 1-012.02 Definitions

The following definitions shall apply in the interpretation of this 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 Ordinances and the properties so affected:

“Parish” shall mean the Parish of St. Tammany, inclusive of the Office of the Parish President.

“Counsel to the Parish President” shall mean that person who serves exclusively as the in-house, executive counsel to the Office of the Parish President.

“Decision” or “order” shall mean an administrative act of the Administrative Hearing Officer under authority of this Chapter.

“Director” shall mean the head of a Parish agency or department which 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. Tammany 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.

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

“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.

“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.

“Property” means movable and immovable property.

“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. 1-012.04 Hearing Officer(s)

- (a) Hearing Officer(s) shall be appointed by the Office of the Parish President, with confirmation by the St. Tammany Parish Council.
- (b) All Hearing Officers shall be sworn before the Parish 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.
- (c) A Hearing Officer shall be an attorney licensed to practice law in the State of Louisiana.
- (d) A Hearing Officer shall be an attorney in good standing with any and all Courts of this State.
- (e) A Hearing Officer shall have been licensed to practice law in Louisiana for ten (10) years.
- (f) A Hearing Officer cannot have been employed by, nor been the legal representative of, nor done business with the Parish or any of its departments or agencies within two (2) years of employment as a hearing officer.
- (g) A Hearing Officer cannot have practiced before the Parish Council within two (2) years of employment as a hearing officer.
- (h) Prohibitions as to a Hearing Officer shall also include the Hearing Officer’s law firm or association of attorneys.

Sec.1-012.06 Authority of Hearing Officer

Hearing Officers who have been appointed and sworn in accordance with Section 1-012.04 of this 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 St. Tammany Parish Council.

Adjudication authority of the Hearing Officer shall include, but not be limited to, violations of all Chapters in this Code, together with any supplements or addenda as may be promulgated hereinafter.

Sec. 1-012.08 Counsel to the Parish President not to assist

Legal counsel to the Office of the Parish President may not provide legal assistance to the Hearing Officer in the administration of this Chapter.

Sec. 1-012.10 Powers of the Hearing Officer

The Hearing Officer shall have all power and authority set forth in the applicable provisions of La.R.S. 13:2575, the provisions of La.R.S. 13:2575.2, the provisions of La.R.S. 14:107.3, all other applicable state laws and regulations, and the following nonexclusive powers to:

- (1) Administer oaths and affirmations;
- (2) Issue orders, including the declaration and certification set forth in La.R.S. 14:107.3, and/or administrative subpoenas compelling the attendance of witnesses, respondents and violators and the production of documents;
- (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.R.S. 33:4754;
- (4) Order violators to correct violations within a stipulated time;
- (5) Take necessary and lawful measures to affect correction 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 thirty (30) days of the levy of the same.
- (7) Take such actions as are necessary to protect the safety, health and welfare of the citizens and property of this Parish.
- (8) Assume such inherent powers as are necessary to protect the safety, health and welfare of the citizens and property of this Parish.

Sec. 1-012.12 Hearing Practice and Procedures

- (a) 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, if he is an alleged violator, or both the alleged violator and the owner of any property on which a violation is alleged, if the alleged violator is not the property owner, at least fifteen (15) days in advance of the date that such a hearing is scheduled. 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 violator, or both, or personally served on the owner or violator, or both. The date of the postmark shall be deemed to be the date of delivery. Any notification so sent and returned by U.S. Post Office shall be considered as having fulfilled the notification requirement; provided, that in the case of such a returned notice, if the person to be notified has a telephone number listed in the St. Tammany Parish phone directory at least one attempt shall be made to notify him by telephone. Proof of notification and attempts at service and telephone notice shall be entered in the record of each case prior to the hearing.
- (b) In addition to the personal or mail service required by paragraph (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.

- (c) 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.
- (d) Failure of any person charged with a violation to appear at the hearing shall be considered an admission of liability for the charged violation; provided that the notice requirements established in paragraphs (a), (b) and (c) of this Section have been satisfied, and provided further that a Hearing Officer, in his sound discretion and for good cause shown, may vacate an order issued on the basis of such an admission and reopen the proceedings, and may do so when requested in writing by the violator or by the appropriate director.
 - (1) In case of application for an administrative re-hearing by the violator, the violator shall timely notice the director within fifteen (15) days of the issuance of the notice of the final order of a request for a referring.
 - (2) In such a request, the violator shall submit any and all proof that he deems necessary to demonstrate "good cause" for such a re-hearing.
 - (3) In such a case, the director shall have exclusive authority to recommend or not recommend a re-hearing to the Hearing Office.
 - (4) The director shall submit his recommendation to the Hearing Officer within fifteen (15) days.
 - (5) The Hearing Officer shall deny or grant a re-hearing within fifteen (15) days of receipt of the director's recommendation.
 - (6) The Administrative Procedure Act (Title 49) shall specifically not apply to this limited procedure of a request for a re-hearing.
- (e) Any order compelling the attendance of witnesses or the production of documents shall be enforced by the 22nd Judicial District Court for the Parish of St. Tammany or by any other court of competent jurisdiction, in the same manner as any subpoena in a civil matter.
- (f) Complaints may be initiated by the public and violation notices will be issued upon the submission of affidavits and/or documentary evidence sufficient to prove the existence of health, housing, fire code, environmental, or historic district Ordinance violations, or any matters involving licensing and permits and any other Ordinance violations that may be determined by the Parish, as determined by the enforcement agency or department director.
- (g) 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, LSA 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, his physical presence shall not be required at the hearing, and a failure to appear shall not be deemed an admission under paragraph (d) of this Section, if documentary evidence, duly verified by such person, is submitted to the Hearing Officer prior to the date of the hearing.

- (h) In determining the amount of any fine or penalty, 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.
- (i) Within five (5) legal days of the close of the hearing, the Hearing Officer shall issue a final order stating whether or not the person charged is liable for the violation; the amount of any fine or costs assessed against him and a date by which the violation shall be corrected. Any order assessing a fine, or costs and/or stipulating a correction date may be enforced by the Courts of St. Tammany Parish. 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. The final order shall notify the violator of his right of appeal and shall, so much as possible, conform to the stylistic and typographical requirements established for the notice of violation.
- (j) 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.
- (k) 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.
- (l) The Director of the Department of Finance shall have the authority, pursuant to the provisions of La. R.S. 33:4754, and any other applicable statutes, to sell, dispose and/or alienate such properties.
- (m) 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.

Sec.1-012.14 Non-exclusivity of Procedures

The procedures and remedies established by this 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 definitely exonerated the alleged violator of the violation charged.

Sec.1-012.16 Liens

(1) The Hearing Officer shall record or cause to be recorded a certified copy of an order imposing a fine or other charge in the public records of the Parish within thirty (30) days from the issuance of the final order. The costs of such recordation shall be assessed to the property in question. The Hearing Officer may assess a reasonable fee for the costs of lien certificate preparation and title examination. Once recorded, the certified copy of this order shall constitute a lien against the land on which the violation exists.

(2) Any lien placed against such immovable property under this Chapter shall be included in the next annual ad valorem tax bill and must be paid along with such taxes, subject, however, to any valid homestead exemption. Failure to pay the liens shall cause any parcel of immovable property which is not subject to a bona fide homestead exemption to be subject to the same provisions of law as govern tax sales of immovable

property, except as may otherwise be authorized by statute, including the authority set for in the provisions of La.R.S. 33:4754. Except as may otherwise be provided, any lien placed against immovable property that has a legal homestead exemption from taxes will become payable ninety (90) days after the death of the owner thereof or immediately upon transfer of title to a new owner, whichever comes first.

(3) Any fee or charge assessed by the Assessor's Office shall be added to the tax bill and thereafter paid to the Assessor upon payment of such taxes.

Sec.1-012.18 Appeal

(1) Any person or persons jointly or severally aggrieved by any decision of the St. Tammany Parish hearing officer may present a petition to the district court of the parish along with payment of such reasonable costs as may be required by the clerk. Such petition shall be duly verified, set forth that the decision is illegal, in whole or in part, and specify the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision of the hearing officer.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the hearing officer to review the decision of the hearing officer and there shall be prescribed therein the period of time within which a return may be made and served upon the relator's attorney. Such period shall be not less than ten days but may be extended by the court. The allowance of the writ shall not stay the proceedings upon the decision or any enforcement thereof unless the person who files the appeal for writ of certiorari furnishes security prior to filing notice of appeal with the agency of the parish designated by ordinance to accept such payments in the amount to be fixed by the hearing officer sufficient to assure satisfaction of the finding of the hearing officer relative to the fine, fee, penalty, costs of the hearing, and costs, if any, of correcting the violation.

(3) The St. Tammany Parish hearing officer shall not be required to return the original papers acted upon by the hearing officer, but may return certified or sworn copies thereof or such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take additional evidence or appoint a referee to take such evidence as it may direct. Such referee shall report the same to the court with his findings of fact and conclusions of law, and his report shall constitute a part of the proceedings upon which the determination of the court shall be made.

(5) The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review. All issues in any proceedings under this Section shall have preference over all other civil actions and proceedings. The appellant and St. Tammany Parish shall be parties in such civil action and proceeding; the St. Tammany hearing officer shall not be a party to such civil action and proceeding.

Sec. 1-012.20 Record Requirements

- (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. Tammany versus" followed by the name of the alleged violator. The record 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) 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 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. 1-012.22 Superceding Ordinance

When this ordinance is applied, its provisions shall supercede all ordinances, or parts of ordinances, previously adopted and in conflict herewith.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective fifteen (15) days after adoption.

MOVED FOR ADOPTION BY _____, SECONDED BY _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS:

NAYS:

ABSTAIN:

ABSENT: