

CITY OF SPRINGFIELD, FLORIDA

ORDINANCE NO.: 381

**AN ORDINANCE OF THE CITY OF SPRINGFIELD
ADOPTING A CODE ENFORCEMENT HEARING
OFFICER SYSTEM, ESTABLISHING PROCEDURES FOR
HEARINGS, PENALTIES AND APPEALS AND
REPEALING ALL OR PARTS OF ORDINANCES IN
CONFLICT HEREWITH; AND PROVIDING EFFECTIVE
DATE.**

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SPRINGFIELD, FLORIDA that:

ARTICLE I. IN GENERAL

Section 1. Civil offenses and penalties; hearing officers.

The violation of any City ordinance shall constitute a civil offense punishable by civil penalty in the amount prescribe herein. Accordingly, there is hereby created and established a code enforcement position to be filled by hearing officers to enforce the ordinances of the City of Springfield contained in and enacted prior to this Code.

ARTICLE II. CODE ENFORCEMENT HEARING OFFICER SYSTEM

Section 1. Qualifications, appointment and removal of hearing officers; organization.

(A) Hearing officers shall be persons who possess outstanding reputations for civic pride, interest, integrity, responsibility and business or professional ability. They shall have no criminal or code violation history in their background. Appointments shall be made by the City Clerk of Springfield on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the City Commissioners for ratification by majority vote. Preference in the appointment of the Hearing Officer may be given to residents of the City of Springfield.

(B) The City Commission shall appoint as many hearing officers as are deemed necessary. Appointments shall be made for a term of one (1) year. Any hearing officer may be reappointed at the decision of the City Clerk, subject to ratification by the City Commission. There shall be no limit on the number of reappointments that may be given to any individual hearing officer; provided, however, that a determination as to the removal or reappointment must be made for each hearing officer at the end of each of his one-year terms. The City Commission shall have the authority to remove hearing officers at any time with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(C) Hearing officers shall not be City employees but shall be compensated at a rate to be determined by administrative order.

(D) The City Attorney may serve as general counsel to the hearing officers. If an appeal to the Circuit Court is requested pursuant to Article III, Section 5 A, the City Attorney shall represent the City at such proceedings.

Section 2. Code Enforcement Procedure.

(A) For the purpose of this ordinance a "Code Inspector" is defined to be any agent or employee of the City of Springfield whose duty is to assure code compliance.

(B) Code Inspectors shall have the authority to initiate enforcement proceedings as provided below. No hearing officer shall have the power to initiate such proceedings.

(C) For the purpose of this ordinance, "violators" shall be deemed to be those persons or entities legally responsible for the violation of any Springfield Ordinance.

(D) A Code Inspector who finds a violation of a City Ordinance shall determine a reasonable time period within which the violator must correct the violation. The determination shall be based on consideration of fairness; practicality, ease of correction, ability to correct, severity of the violation; nature, extent and probability of danger or danger to the public; and other relevant factors relating to the reasonableness of the time period prescribed. A time for correction need not be specified if the violation is deemed to be an uncorrectable violation.

(1) If, based on the circumstances surrounding the violation, the Code Inspector deems it practical he may issue a "*First Notice Warning*" requiring compliance within a specified time. This notice is intended to obtain voluntary compliance without the necessity of penalties. Failure to comply as required in the First Notice Warning shall result in the Code Inspector proceeding with a Notice of Civil Violation. The Code Inspector may take into consideration the time already allotted in the First Notice Warning in setting a compliance time in the Notice of Civil Violation.

(E) A Code Inspector who finds a violation shall issue a civil violation notice to the violator. Service shall be effected by delivering the civil violation notice to the violator or his agent, or by leaving the violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of it's contents. If such service cannot be effected, the civil violation notice must be sent by certified mail, return receipt requested, or by posting the violation notice in a conspicuous place on the premises or real property upon which the violation has been observed. Such posting of the civil violation notice shall be deemed proper service, and the time for compliance, stated on the notice, shall commence with the date such notice is posted.

(F) The civil violation shall include but not be limited to the following:

- (1) Date of issuance.
- (2) Name of Code Inspector and division or department issuing the notice.
- (3) Name and address of the violator.
- (4) Ordinance number and section violated.
- (5) Brief description of the nature of the violation, including location, date and

time of violation.

(6) Amount of civil penalty for which the violator may be liable.

(7) Instructions and due date for paying the fine or filing for an administrative hearing before a hearing officer to appeal the civil fine.

(8) Time within which the violation must be corrected, if applicable.

(9) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to additional penalty in the same amount, without the need for additional notices of violation. No appeal is allotted for continued violations beyond the original date of appeal.

(10) Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.

(11) Notice that failure to request an administrative hearing within twenty (20) days, or within the specified time period listed for a violation of a specific section of an ordinance, after service of a civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the hearing officer, and such waiver shall constitute an admission of the violation.

(12) Notice that the violator may be liable for the reasonable costs of the administrative hearing should he be found guilty of the violation.

ARTICLE III. HEARINGS, PENALTIES AND APPEALS.

Section 1. Civil penalties and related terms construed.

(A) Penalties for violations of the ordinances to be enforced by this ordinance shall be in the amount prescribed in the schedule of civil penalties in Section 8.

(B) An "*uncorrectable violation*" is a violation which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an on-going condition or circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to a additional penalty double that of the original violation. If, however, a violator has been found guilty of an uncorrectable violation and causes the same uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable violation by the violator shall constitute a "*repeat violation*" as provided in Section 4, D.

(C) "*Continuing violations*" are those violations which remain uncorrected beyond the reasonable time period for correction in either the civil violation notice or the final order of the hearing officer, whichever is applicable. For each day of continued violation after the time for correction has run, an additional penalty of the same amount as that prescribed for the original violation shall be added. The maximum total fine for any one continuing violation shall not exceed ten (10) times the original penalty amount.

(D) A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been guilty of the same violation. In the case of correctable violations, a repeat violation can occur only after correction of the previous violation has been made. For the first repeat violation the amount of the civil penalty shall be double the amount of penalty prescribed for the original violation by Section 8. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of the penalty due for the first day of the immediately preceding violation, provided that the maximum penalty payable for the first day of any one (1) repeat violation shall be seven hundred fifty dollars (\$750.00).

(E) A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation, and additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation.

(F) Continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made if a request for administrative hearing is not timely filed. If the named violator requests an administrative hearing on a correctable violation and loses his appeal, the hearing officer shall determine a reasonable time period within which correction for the violation must be made, based on the considerations set forth in Article II, Section 2, (D). If correction is not made within the period set by the hearing officer, continuing violation penalties shall begin after the time of correction has run. No continuing violation penalties shall accrue during the time period from the date of the civil violation notice until the date of the administrative hearing, if the named violator timely requests an administrative hearing to appeal the decision of the Code Inspector. Continuing violation penalties cannot be imposed by the hearing officer for uncorrectable violations.

(G) Civil penalties assessed pursuant to this ordinance are due and payable to the Clerk of Court of Bay County, Florida, on the last day of the period allowed for the filing of an appeal from the hearing officer's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Section 2. Rights of violators; payment of fine; right to appeal and correction of violation; failure to pay and correct, or to appeal.

(A) A violator who has been served with a civil violation notice shall elect either to:

(1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or

(2) Request an administrative hearing before a hearing officer to appeal the decision of the Code Inspector which resulted in the issuance of the civil violation notice.

(B) Appeal by administrative hearing of the notice of violation before a Hearing Officer shall be accomplished by filing a request in writing to the address indicated on the notice, received by the Hearing Officer within the time limit stipulated in the notice, or no later than twenty (20) calendar days after the service of the notice, whichever is earlier.

(C) If the named violator, after notice, fails to pay the civil penalty and correct the

violation within the time specified (if applicable), or fails to timely request an administrative hearing before a hearing officer, the hearing officer shall be informed of such failure by report from the Code Inspector. If the named violator pays the civil penalty for a correctable violation but fails to correct that violation within the time specified, each day that the violation continues beyond such specified time shall constitute a continuing violation. Failure of the named violator to appeal the decision of the Code Inspector within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the hearing officer. A waiver of the right to administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

Section 3. Scheduling and conduct of hearing.

(A) Upon receipt of a named violator's timely request for an administrative hearing, the hearing officer shall set the matter down for a hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated in the specified ordinance which is enforced pursuant to this ordinance.

(B) The hearing officer shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:

- (1) Name of the Code Inspector who issued the notice.
- (2) Factual description of the alleged violation.
- (3) Date of alleged violation.
- (4) Ordinance and section allegedly violated.
- (5) Place, date and time of hearing.
- (6) Right of violator to be represented by a lawyer.
- (7) Right of violator to present witnesses and evidence.
- (8) Notice that failure of violator to attend hearing may result in civil penalty be assessed against him.
- (9) Notice that requests for continuances will not be considered if not received by the hearing officer at least ten (10) calendar days prior to the date set for the hearing.

(C) The hearing officers shall call hearings on a bi-weekly basis or upon request of the Clerk of Court of Bay County, Florida
All hearings shall be set for the next scheduled hearing date after receipt of the appeal. No hearing shall be set sooner than twenty (7) calendar days from the date of service of the notice of violation.

(D) A hearing date shall not be postponed or continued unless a request of continuance is

received in writing by the hearing officer at least ten (10) calendar days prior to the date set for the hearing.

(E) All hearings of the hearing officer shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(F) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(G) The Bay County Clerk of Court shall provide clerical and administrative personnel as may be reasonably required by each hearing officer for the proper performance of his duties.

(H) Each case before a hearing officer shall be presented by the City Clerk or his designee.

(I) The hearing need not be conducted in accordance with formal rules relating to evidence and witness. Any relevant evidence shall be admitted if the hearing officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(J) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

(K) The hearing officer shall make findings of fact based on evidence of record. In order to make a finding upholding the Code Inspector's decision, the hearing officer must find that a preponderance of evidence indicates that the named violator was responsible for the violation of the relevant section of the Code as charged.

(L) If the named violator is found guilty of the violation, he may be held liable for the reasonable costs of the administrative hearing, at the discretion of the hearing officer.

(M) The fact-finding determination of the hearing shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice can be held responsible for that violation. Based upon this fact-finding determination, the hearing officer shall either affirm or reverse the decision of the Code Inspector as to the responsibility of the named violator for the Code violation. If the hearing officer affirms the decision of the Code Inspector, the hearing officer shall determine a reasonable time period within which correction of the violation must be made. If the hearing officer reverses the decision of the Code Inspector and finds the named violator not responsible for the Code violation alleged in the civil violation notice, the named violator shall not be liable for the payment of the civil penalty, absent reversal of the hearing officer's findings. If the decision of the hearing officer is to affirm, then the following elements shall be included:

(1) Amount of civil penalty.

(2) Administrative costs of hearing.

(3) Date by which the violation must be corrected to prevent imposition of

continuing violation penalties (if applicable).

(N) The hearing officer shall have the power to:

- (1)** Adopt procedures for the conduct of hearings.
- (2)** Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the Law Enforcement Officers, by the staff of the hearing officer or by the Code Inspector.
- (3)** Subpoena evidence.
- (4)** Take testimony under oath.
- (5)** Assess and order the payment of civil penalties as provided herein.

(O) Appeals:

(1) A hearing officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized City board of appropriate jurisdiction an administrative appeal concerning the interpretation or application of any technical provisions of the Code section allegedly violated. However, once an issue has been determined by a hearing officer in a specific case, that issue may not be further reviewed by a City board in that specific case. A named violator waives his right to appeal to other City boards if the violator does not apply for such appeal prior to the violator's code enforcement hearing before the hearing officer.

(2) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by such board, the hearing officer may exercise all powers given to him by this ordinance. The hearing officer shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of such board has lapsed or until such further appeal has been exhausted.

(3) The hearing officer shall be bound by the interpretations and decisions of duly authorized City boards concerning the provisions of the codes. In the event such a board decides that an alleged violation of the ordinance is not in accordance with such boards interpretation of the ordinance provision on which the violation is based, the hearing officers shall not be empowered to proceed with the enforcement of the violation.

Section 4. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

(A) The City of Springfield may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(B) A certified copy of an order imposing a civil penalty may be recorded in the public

records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgement by the sheriffs of the state, including levy against personal property, but shall not be deemed a court judgement except for enforcement purposes. After one (1) year from the filing of any such lien which remains unpaid, the City of Springfield, Florida may foreclose or otherwise execute on the lien.

Section 5. Appeals.

(A) The named violator of the City may appeal a final order of the hearing officer for all violations by filing notice of appeal in the Circuit Court in and for Bay County, Florida in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.

(B) Unless the findings of the hearing officer are overturned in a proceeding held pursuant to Section 5 (A) all findings of the hearing officer shall be admissible in any proceeding to collect unpaid penalties.

Section 6. Adoption of Chapter 162 of the Florida State Statutes; Creation and adoption of a Code Enforcement Hearing Officer System as authorized in Chapter 162.22.

A. The City of Springfield, Florida has adopted *Chapter 162 of the Florida State Statutes* and it's provisions and powers in the enforcement of City ordinances. *Florida State Statute 162.22* authorizes the City to create and adopt it's own policies, procedures and methods in the enforcement of it's Codes and Ordinances.

B. The City of Springfield, by the adoption of this ordinance has established a *Code Enforcement Hearing Officer System* utilizing a one-person Hearing Officer through which the decision of the Code Inspector may be appealed. The system sets forth the entire procedure for appointment of the Hearing Officer, length of term, removal, duties, responsibilities and powers. It also sets forth the code enforcement procedures, penalties for violations, rights of the violator to appeal, schedule and conduct of the hearings and the City's method of recovering unpaid penalties.

Section 7. Provisions contained herein are supplemental.

Nothing contained in this provision shall prohibit the City from enforcing it's Code by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filling suit for the enforcement of any section of this Ordinance.

Section 8. Schedule of civil penalties.

The following table shows the sections of this ordinance, as they may be amended from time to time by resolution of the City Commission, which may be enforced pursuant to the provisions of this ordinance; and the dollar amount of civil penalty for the violation of these sections as they may be amended. The "descriptions of violations" are for informal purposes and are not meant to limit or define the nature of the violations or the subject matter of the subject Code sections, except to the extent that the different types of violations of the same Code section

may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this ordinance, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

<u>VIOLATION:</u>	<u>ORDINANCE #:</u>	<u>CIVIL PENALTY:</u>
Other	380	\$ 25.00
Water Pollution	380, Sect. II, A, 14	\$ 200.00
Water ban violation	380, Sect. II, A, 19	\$ 50.00
Burning violation	380, Sect. II, A, 17	\$ 50.00
Burning during State or local ban	380, Sect. II, A 20	\$ 100.00
Improper disposal haz. Materials	380, Sect. II, A, 2	\$ 200.00
Improper disposal Commercial garb.	380, Sect. II, A, 2	\$ 50.00
Sanitary nuisance	380, Sect. II, A, 3	\$ 100.00
Violation of "Stop Order"	380, Sect. III, B, 4	\$ 200.00
Occupying RV, camper or trailer outside RV park	380, Sect. II, 25, b	\$ 50.00
Use of mobile home for purpose other than residence	380, Sect. II, 25, a	\$ 50.00
Improper connection of utilities to an RV, camper or trailer	380, Sect. II, 25, c	\$ 50.00
Failure to have mobile home permitted or inspected	348	\$ 100.00
Parking mobile home w/out permit	380, Sect. II, 25, d	\$ 100.00
Abandoned/unmaintained mobile home	380, Sect. II, 25, e	\$ 50.00
Animal violations, other	341	\$ 25.00
Animal cruelty	341, Sect. 5, a	\$ 100.00
Animal, pen violation	341, Sect. 13	\$ 50.00

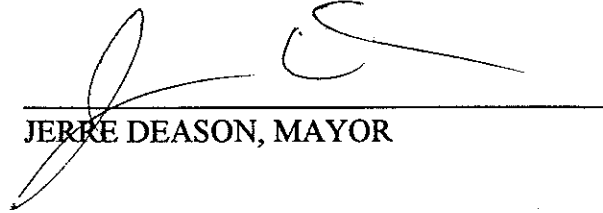
Derelict vehicle	382, Sect. II, A	\$ 100.00
Vehicle, other	382	\$ 50.00
Dumping or allowing dumping from outside City limits	377, Sect., II, A	\$ 200.00
Improper disposal of Bio. Hazards	377, Sect., 2, C	\$ 200.00
Sanitation violations, other	377	\$ 25.00
Commercial trash fee violation	365	\$ 100.00
Unsafe structure by, rental	Rental, Sect. II, A, 1	\$ 200.00
Removal of posted Civil Violation	Rental, Sect. II, F, 1	\$ 100.00
Violation of "Do not rent"	Rental, Sect. II, A, 5	\$ 200.00
Sign permit violation	LDR, Article IV, Sect. 4-5	\$ 300.00
Sign, prohibited	LDR, Article IV, Section 4-6	\$ 300.00
Sign violation, other	LDR, Article IV	\$ 100.00
Unlawful accumulation of tires/rims	330	\$ 50.00
Refusal to sign Code Enforcement Citation	340, Sect. 7	\$ 50.00
Occupational License violation	358	\$ 100.00
Dealing in junk	279	\$ 100.00
Building/septic tank violation	209	\$ 100.00
Water/sewage, mandatory connection violation	329	\$ 50.00
Obstructing drainage	206	\$ 50.00

ARTICLE IV. EFFECTIVE DATE AND REPEALER:

This ordinance shall become effective upon passage. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict

PASSED, APPROVED AND ADOPTED in regular session of the City Commission this the 4th day of January, 1999.

CITY OF SPRINGFIELD



JERRE DEASON, MAYOR

ATTEST:



CHARLES A. YAUTZ, CITY CLERK

First Reading: 12/18/98
Second Reading: 01/04/99
Date Published: 12/18/98

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