

CITY OF SPRINGFIELD, FLORIDA

ORDINANCE NO. : 433

AN ORDINANCE OF THE CITY OF SPRINGFIELD AMENDING AND SUPPLEMENTING ORDINANCE 381; AMENDING PROCEDURES FOR HEARINGS, PENALTIES AND APPEALS AND REPEALS ALL OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN 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 prescribed 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 2. Qualifications, appointment and removal of hearing officers; organization.

(A) Hearing officers shall be residents of the City of Springfield, Florida 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.

(B) The City Clerk shall appoint as many hearing officers as are deemed necessary. Appointments shall be made for a term of one (1) year. A hearing Officer will be reappointed automatically, unless the City Commission elects not to renew an appointment; provided, however, that the election not to renew a Hearing Officer's appointment and notice thereof occurs thirty (30) days prior to the renewal of that Hearing Officer's term. There shall be no limit on the number of reappointments that may be given to any individual hearing officer. The Mayor or the City Commission shall have the authority to remove or suspend Hearing Officers for cause including, without limitation, those grounds specified by state law. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(C) Hearing officers shall not be City employees but shall serve without compensation. Hearing Officers may be reimbursed for such travel, mileage, and per diem expenses as authorized by the Mayor.

(D) The City Attorney may serve as general counsel to the City. If an appeal to the Circuit Court is requested pursuant to Article 3, Section 5 the City Attorney shall represent the City at such proceedings.

Section 3. 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 creating or permitting a violation of a City Ordinance, or those persons or entities owning or possessing land on which a violation of an ordinance is created or maintained. The City finds and determines that the owner of land has an obligation to know whether conditions created or maintained on that land violates any City ordinance and therefore is deemed to have actual constructive knowledge of any such violation. The owner of land has a legal duty to determine whether conditions created or maintained on his or her land violate any City ordinance, and to correct such violations.

(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 provided that such time period shall be no more than thirty (30) days. 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.

(E) A Code Inspector who finds a violation shall issue a civil violation notice to the violator pursuant to Article II, Section 4.

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

(1) Date and time 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.*
- (13) Notice that if the violator fails to pay civil penalty in the time allowed, or fails to appear in court to contest the violation, the violator shall be deemed to have waived his right to contest the violation and that, in such case, judgement may be entered against the violator by the Hearing Officer for the amount of maximum civil penalty.*

(G)

After issuing a civil violation notice to an alleged violator, the Code Inspector shall promptly deposit the original civil violation notice and one copy of the civil violation notice with the Clerk of the Court of Bay County, Florida.

Section 4 Notices.

(A)

All notices required by this part shall be provided to the violator by:

(1) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the Tax Collector's Office for tax notices, and at any other address provided to the City by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs 2a and 2b and by first class mail directed to the addresses provided to the City by such owner with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivered by the Sheriff or other law enforcement officer, Code Inspector, or other person designated by the local governing body;

(3) Leaving the violation notice at the violator's usual place of residence with any person residing therein who is more than 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(B)

In addition to providing notice as set forth in subsection (A), at the option of the Hearing Officer, notice may also be served by publication or posting, as follows:

(1) a. Such notice be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.

(1)b Proof of publication shall be made as prescribed in Sections 50.0541 and 50.051, Florida Statutes.

(2)a In lieu of publication provided in paragraph (1), such notice may be posted at least ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be the City Hall.

(2)b Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice and the date and places of its posting.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as prescribed in subsection (A).

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (A) together with proof of publication or posting as prescribed in subsection (B), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

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 Article 4, Sect. 2.

(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 twenty (20) times the original penalty amount.

(D) A "*repeat violation*" is a recurring violation of an ordinance by a violator who has been found guilty of the same violation within five (5) years prior to the present violation, or who has admitted violating the same provision within five (5) years prior to the present violation, notwithstanding the violations occurred at different locations.. 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 Article 4, Sect. 2. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of the penalty due

(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 and shall be electronically recorded. 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. Minutes shall be kept of all hearings by each Hearing Officer.

(G) The Bay County Clerk of Court shall provide clerical and administrative personnel, services, forms and facilities as may be reasonably required by each hearing officer for the proper performance of his duties and shall collect and pay over to the City all civil penalties, costs and other sums due and payable hereunder, retaining such portion thereof as from time to time may be established by resolution of the City Commission to compensate the Clerk for such assistance.

(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 but fundamental due process shall be observed and shall govern the proceedings. 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) The Hearing Officer may take testimony from the Code Inspector and the alleged violator. 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 as set forth by the Bay County Clerk of Court. If the City prevails in prosecuting a case before the Hearing Officer, the City shall be entitled to recover all costs incurred in prosecuting the case before the Hearing Officer and such costs will be included in the lien authorized under Section 7.

(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 is held responsible for that violation as provided in Section 3(c). Based upon this fact-finding determination, the hearing officer shall either reverse or affirm the decision of the Code Inspector as to the responsibility of the named violator for the Code violation, and shall issue an order affording the proper relief. If the hearing officer affirms the decision of the Code Inspector, the hearing officer shall issue an order and 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 pursuant to Section 5, O. If the decision of the hearing officer is to affirm, then the following elements shall be included in the order:

(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 a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized City board of appropriate jurisdiction a timely 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 board's 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.

(P)

If the owner of property which is subject to an enforcement action or proceeding transfers ownership of such property between the time the initial citation or citations were issued and the time of the hearing, such owner shall:

(1)

Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this Ordinance.

Section 7. Schedule of civil penalties.

The following table shows the sections of this ordinance, as they may be amended from time to time, 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.

Article IV. Authority:

Section 1. 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 its provisions and powers in the enforcement of City ordinances. *Florida State Statute 162.22* authorizes the City to create and adopt its own policies, procedures and methods in the enforcement of its Codes and Ordinances.

B. The City of Springfield, by the adoption of Ordinance 381 January 4, 1999, 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 2. 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.

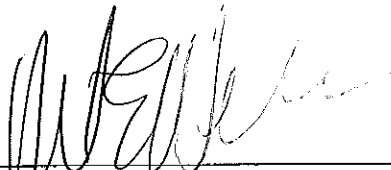
ARTICLE IV. EFFECTIVE DATE AND REPEALER:

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 19th day of April, 2004.

FLORIDA

CITY OF SPRINGFIELD,



Robert E. Walker, Mayor

ATTEST:



Jimmie Anderson, Acting City Clerk

First Reading: April 5, 2004
Date Published: April 8, 2004
Second Reading: April 19, 2004