

ORDINANCE 1488

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, RELATED TO CODE ENFORCEMENT PROCEDURE; REVISING THE PROCESS FOR APPEALS AND PAYMENTS OF CIVIL PENALTIES ISSUED PURSUANT TO CHAPTER 25 OF THE CITY'S CODE OF ORDINANCES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance, Section 25-17 of the Code of Ordinances of the City of Panama City Beach related to Nuisances, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 25-17. - Code Enforcement Procedure.

(a) For the purposes of this chapter, a "Code Inspector" is defined to be any agent or employee of the City whose duty it 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 purposes of this chapter, "violators" shall be deemed to be those persons or entities creating or permitting a violation of the ordinances listed in Section 25-37, or those persons or entities owning or possessing land on which a violation of ordinances

listed in Section 25-37 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 or 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 the ordinances of this Code listed in Section 25-37 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. This determination shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage 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 an uncorrectable violation.

(e) A Code Inspector who finds such a violation shall issue a civil violation notice to the violator, pursuant to Section 25-18.

(f) The civil violation notice 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) Section number of the Code section that has been violated.
- (5) Brief description of the nature of the violation, including location, date, and time of violation.
- (6) Amount of the civil penalty for which the violator may be liable.

(7) Instructions and due date for paying the civil 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.

(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 the Code, after issuance of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the Hearing Officer, and that such waiver shall constitute an admission of 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~~ **before the Hearing Officer** to contest the violation, the violator shall be deemed to have waived his right to contest the violation and that, in such case, judgment may be entered against the violator by the Hearing Officer for the amount of the 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 **City Clerk or his or her designee**. ~~Clerk of the Court of Bay County, Florida.~~

(Ord. 560, § 1, 1-22-98; Ord. No. 773, § 1, 1-23-03; Ord. No. 1452, § 1, 6-14-2018)

SECTION 2. From and after the effective date of this ordinance, Section 25-31 of the Code of Ordinances of the City of Panama City Beach related to Nuisances, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 25-31. - Civil penalties and related terms construed.

(a) Penalties for violations of the ordinances to be enforced by this chapter shall be in the amount prescribed in the schedule of civil penalties in Section 25-37.

(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 of a transitory nature rather than an ongoing condition or constant circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to an additional penalty in the same amount as that prescribed for the original violation. If, however, a violator has been once found guilty of an uncorrectable violation and causes the same uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable violation by such violator shall constitute a "repeat violation" as provided in Section 25-31(d).

(c) "Continuing violations" are those violations which remain uncorrected beyond the reasonable time period for correction contained 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 in 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 Section 25-37. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of 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 five hundred dollars (\$500.00). A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation.

(e) A "correctable violation" is a violation which is not an uncorrectable violation.

(f) A civil penalty imposed pursuant to this Section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation.

(g) If a request for administrative hearing is not timely filed continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made and payment of fine is received. 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 of the violation must be made, based on the considerations set forth in Section 25-17(d). If correction is not made within the period set by the Hearing Officer, continuing violation penalties shall begin after the time for 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.

(h) Civil penalties assessed pursuant to this chapter are due and payable to the **City Clerk or his or her designee** ~~Clerk of Court of Bay County, Florida,~~ on the last day of the period allowed for the filing of an appeal to the Circuit Court from the Hearing Officer's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

(i) In addition, if the Code Inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, or if after attempts under this section to bring a repeat violation into compliance with a provision of a code or ordinance prove unsuccessful, the city may make all reasonable repairs which are required to bring the property into compliance and charge the owner with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property.

(Ord. No. 560, § 1, 1-22-98; Ord. No. 773, § 1, 1-23-03; Ord. No. 1103, § 2, 2-14-08)

SECTION 3. From and after the effective date of this ordinance, Section 25-33 of the Code of Ordinances of the City of Panama City Beach related to Nuisances, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 25-33. - Scheduling and conduct of hearing.

(a) Upon receipt of a named violator's timely request for an administrative hearing, ~~the Hearing Officer~~ **City Clerk or his or her designee** shall set the matter down for hearing on the next regularly

scheduled hearing date or as soon thereafter as possible or as mandated in the specified Code section which is enforced pursuant to this chapter.

(b) The ~~Hearing Officer~~ **City Clerk or his or her designee** shall provide a notice of hearing by certified mail to the named violator at his last known address. Alternatively, the notice may be delivered as provided in Section 25-18. 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 alleged violation.
- (3) Date of alleged violation.
- (4) Section of the Code allegedly violated.
- (5) Place, date and time of the 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 being 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 hearing.

(c) The Hearing Officers shall call hearings on a monthly basis or upon the request of the **City Clerk or his or her designee** ~~Clerk of Court of Bay County, Florida~~. No hearing shall be set sooner than twenty (20) calendar days from the date of issuance of the notice of violation.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such 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~~ **The City Clerk or his/her designee** 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 Council to compensate the Clerk for such assistance.~~

(h) Each case before a Hearing Officer shall be presented by the City Manager or his designee.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses 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 the 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 City Clerk or his or her designee ~~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 Code Section 25.34.

(m) The fact-finding determination of the Hearing Officer shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice is responsible for that violation as provided in Section 25-17(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 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 any civil penalty, absent reversal of the Hearing Officer's findings pursuant to Section 25-35. 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 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) or assessment (in the case of uncorrected violations of Chapter 15).

(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.

(3) Subpoena evidence.

(4) Take testimony under oath.

(5) Assess and order the payment of civil penalties as provided herein; and

(6) In cases where the named violator is found guilty of a violation of Chapter 15, authorize the City's abatement following failure of the violator to correct the violation within the time ordered.

(o) The named violator may timely file an administrative appeal.

(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 had 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 administrative 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 chapter. 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 within their respective City jurisdictions. In the event such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code 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.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the Hearing Officer of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of transfer.

A failure to make the disclosure described in subparagraphs (p)(1)(2)(3) above, before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed but the new owner will be added as an additional party of record and thereafter shall be provided a reasonable period of time as determined by the Code Inspector to

correct the violation before the hearing is held. Continuing violation penalties, if any, shall continue to accrue against the original party. No civil penalty or continuing violation penalties shall accrue against the new owner until and unless the new owner shall fail to correct the violation within the reasonable period provided to the new owner. All parties shall be jointly and severally liable for any penalties up to the amount common among them, and the amounts paid to the City shall be first applied to that common, joint and several amount.

(Ord. No. 560, § 1, 1-22-98; Ord. No. 773, § 1, 1-23-03 Ord. No. 1452, § 1, 6-14-2018)

SECTION 4. REPEAL. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

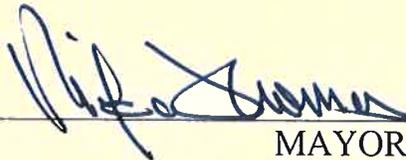
SECTION 5. CODIFICATION. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code of Ordinances and the Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following each such publication, each codification of this Ordinance shall become the final and official record of the matters herein ordained and there codified. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 6. SEVERABILITY. If any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such

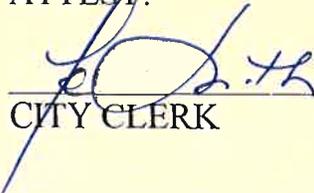
invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage.

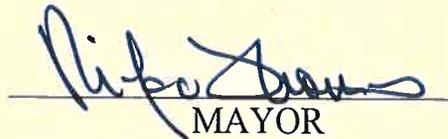
PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 10th day of January, 2019.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 10th day of January, 2019.


MAYOR

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