

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2008 Legislative Session, Legislative Day No. : December 9, 2008

Bill No.: 1160

Expiration Date: February 12, 2009

Introduced by: Mr. Bartlett

A BILL TO AMEND CERTAIN SECTIONS OF CHAPTER 58, TALBOT COUNTY CODE, "CODE COMPLIANCE; VIOLATIONS AND PENALTIES" TO PROVIDE FOR THE APPOINTMENT OF A HEARING OFFICER TO CONDUCT ADMINISTRATIVE REVIEWS OF THE AMOUNTS OF CIVIL PENALTIES FOR CODE VIOLATIONS, TO SPECIFY THE CONTENT OF NOTICES OF VIOLATION AND ASSESSMENT OF CIVIL PENALTIES, TO PROVIDE FOR SERVICE OF CIVIL PENALTY DECISIONS, TO ENACT CODE COMPLIANCE PROVISIONS APPLICABLE TO CRITICAL AREA VIOLATIONS, TO ENACT REQUIREMENTS FOR REVIEWS, PERMITS, APPROVALS, SPECIAL EXCEPTIONS, OR VARIANCES RELATED TO CRITICAL AREA VIOLATIONS, TO PROVIDE FOR ISSUANCE OF ADMINISTRATIVE ABATEMENT ORDERS BY CODE COMPLIANCE OFFICERS, AND TO PROVIDE FOR ADMINISTRATIVE REVIEWS AND APPEALS OF HEARING OFFICER DECISIONS TO THE BOARD OF APPEALS

By the Council: December 9, 2008

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, January 13, 2009 at 2:00 p.m. in the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order _____
Susan W. Moran, Secretary

A BILL TO AMEND CERTAIN SECTIONS OF CHAPTER 58, TALBOT COUNTY CODE, "CODE COMPLIANCE; VIOLATIONS AND PENALTIES" TO PROVIDE FOR THE APPOINTMENT OF A HEARING OFFICER TO CONDUCT ADMINISTRATIVE REVIEWS OF THE AMOUNTS OF CIVIL PENALTIES FOR CODE VIOLATIONS, TO SPECIFY THE CONTENT OF NOTICES OF VIOLATION AND ASSESSMENT OF CIVIL PENALTIES, TO PROVIDE FOR SERVICE OF CIVIL PENALTY DECISIONS, TO ENACT CODE COMPLIANCE PROVISIONS APPLICABLE TO CRITICAL AREA VIOLATIONS, TO ENACT REQUIREMENTS FOR REVIEWS, PERMITS, APPROVALS, SPECIAL EXCEPTIONS, OR VARIANCES RELATED TO CRITICAL AREA VIOLATIONS, TO PROVIDE FOR ISSUANCE OF ADMINISTRATIVE ABATEMENT ORDERS BY CODE COMPLIANCE OFFICERS, AND TO PROVIDE FOR ADMINISTRATIVE REVIEWS AND APPEALS OF HEARING OFFICER DECISIONS TO THE BOARD OF APPEALS

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 58 of the Talbot County Code entitled "CODE COMPLIANCE; VIOLATIONS AND PENALTIES," shall be and is hereby amended as set forth herein.

* * *

§ 58-2 Compliance officials.

A. Compliance Officer.

Subject to the approval of the County Council, the County Manager shall appoint a Chief Code Compliance Officer. The Chief Code Compliance Officer shall enforce, and supervise and delegate enforcement of this Code through subordinate Code Compliance Officers.

B. Hearing Officer.

Subject to the approval of the County Council, the County Manager shall appoint a Hearing Officer. The Hearing Officer shall conduct administrative reviews under § 58-12 B, below, to evaluate the amount of civil penalties in accordance with Rules of Procedure adopted by resolution of the County Council. Following an administrative review, the Hearing Officer may decrease, increase, or confirm the amount of the civil penalty. In addition, the Hearing Officer may modify or impose payment terms, conditions, schedules, or other requirements and may suspend all or any part of any civil penalty.

§ 58-3 Code compliance and violations.

No person shall violate any provision of this Code. Each violation that occurs and each calendar day that a violation continues shall be a separate offense. Any person who violates any provision of this Code shall be subject to separate fines, orders, sanctions, and civil penalties for each offense.

* * *

§ 58-5 Civil Penalties.

A. General.

Subject to the limitation set forth in Paragraph C, below, each offense shall be punishable by a civil penalty of up to \$1,000 per calendar day. The amount of a civil penalty shall be administratively imposed by the Chief Code Compliance Officer pursuant to Art. 24, § 14-101, Md. Ann. Code, by written notice. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. Except for Critical Area violations governed by § 58-10.1 B, below, to set the amount of a civil penalty the Chief Code Compliance Officer shall consider:

- (1) The severity of the violation for which the penalty is to be assessed;
- (2) The presence or absence of good faith of the violator;
- (3) Any history of prior violations.

B. Notice of Violations and Assessment of Civil Penalties.

Every notice of violation and assessment of a civil penalty shall be in writing and shall include:

- (1) A description of the facts supporting each alleged violation, including a citation to the section of the Talbot County Code allegedly violated;
- (2) Classification of each alleged violation as a continuing or non-continuing violation;
- (3) Separate assessment of a civil penalty for each violation, and a separate daily assessment for each continuing violation;
- (4) Notice of the right to request administrative review before the Hearing Officer to evaluate the amount(s) of civil penalties; and,
- (5) Notice of the right to file an appeal to the Board of Appeals.

C. Specific amounts.

When a section of this Code other than Paragraph A., above, establishes a different amount or maximum limit for any violation, the amount or limit so established shall control and the civil penalty imposed pursuant to Paragraph A., above, shall not exceed such amount or limit.

D. Continuing violations.

Civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirement for additional assessments, notice, or hearings. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.

E. Notice of compliance and inspections.

The person(s) responsible for any continuing violation shall promptly provide the Chief Code Compliance Officer written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for the County inspection to verify compliance. Civil penalties for continuing violations continue to accrue under Paragraph B above until the County receives such written notice and verifies compliance by inspection or otherwise.

F. Other damages.

Assessment and payment of civil penalties shall be in addition to and not in substitution for recovery by the County of all damages, costs, and other expenses caused by the violation, including the cost to correct any violation or repair, restore, or replace any County property.

G. Other permits and approvals.

Payment of all civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Code.

H. Service.

Notice of violations and assessment of civil monetary penalties, and decisions by the Hearing Officer shall be served by certified mail, return receipt requested, and simultaneously by first-class mail, postage prepaid, bearing a return address. Service shall be effective upon mailing. In addition, any other method of service reasonably calculated to provide actual notice, and any method that does provide actual notice, shall be sufficient, including service by personal delivery to a responsible person at the premises, or posting on the premises in a conspicuous place.

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§ 58-7. Administrative abatement orders.

A. Issuance.

Code Compliance Officers may issue an administrative abatement order to any person to perform any act or thing required by this Code. The administrative abatement may order such person:

- (1) To correct, discontinue or abate any violation;
- (2) To cease any activity being performed in violation of this Code;

- (3) To apply for any permit, approval, special exception, or variance required by this Code;
- (4) To remove any construction materials, equipment, and any structures or other construction work built or erected in violation of this Code;
- (5) To restore any property to its condition as it existed before any violation of this Code; and,
- (6) To perform any condition or obligation required by this Code or by any permit, approval, special exception, variance, license, contract, deed, or other instrument required or executed pursuant to this Code.

* * *

§ 58-10.1 Critical Area Violations.

All provisions of Chapter 58 apply to violations of the Critical Area Program. To the extent of any inconsistency, the provisions of this section control.

- A. In addition to any other penalty applicable under State or local law, each person who violates any provision of the Critical Area Program, including a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation is subject to a civil penalty not to exceed \$10,000 per violation, per day.
 - (1) A person shall be subject to separate fines, orders, sanctions, and civil penalties for each violation.
 - (2) Each violation of the Critical Area Program, or of any County ordinance, regulation, rule, administrative order, or other requirement adopted or issued under State or local law concerning the Critical Area Program, constitutes a separate offense.
 - (3) Each calendar day that a violation continues constitutes a separate offense.
 - (4) For continuing violations, civil penalties continue to accrue for each day each violation continues without a separate requirement for an additional assessment, notice, or opportunity for hearing for each separate offense.
- B. The provisions of this section govern imposition of civil penalties for violations of the Critical Area Program as defined in the preceding Subsection A. Civil penalties shall be imposed for all violations of the Critical Area Program. The following criteria apply to determine the amount of the civil penalty:
 - (1) The gravity of the violation;
 - (2) The willfulness or negligence, if any, of the violation;
 - (3) The environmental impact of the violation; and

- (4) The cost to restore the affected resource, mitigation for damage to that resource, and costs to the State and County for performing, supervising, or assisting with restoration and mitigation.

§ 58-10.2 Reviews, permits, approvals, special exceptions, or variances related to a violation of the Critical Area Program.

The provisions of this section govern applications for any review, permit, approval, special exception, or variance related to a violation of the Critical Area Program.

- A. No County department, commission, or agency, including the Planning Commission or Board of Appeals, may:
 - (1) Accept an application for any review, approval, permit, special exception, or variance until a notice of violation has been issued and a separate civil penalty has been assessed for each violation of the Critical Area Program on the affected property;
 - (2) Issue any review, permit, approval, special exception, or variance for property on which a violation of the Critical Area Program exists, until and unless:
 - (a) All civil monetary penalties imposed under Section 58-10.1 B have been paid in full;
 - (b) A restoration or mitigation plan to abate impacts to water quality and natural resources caused by or related to the violation has been prepared and approved by the County;
 - (c) All restoration and mitigation has been performed as set forth in the approved plan; and,
 - (d) All abatement measures have been performed as set forth in any final administrative abatement order.
- B. Satisfaction of all conditions specified under Paragraph A., above shall be a condition precedent to issuance by any County Department, Commission, or agency, including the Planning Commission or Board of Appeals, of any review, permit, approval, variance, or special exception for the affected property.
- C. Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.
- D. For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000.00, the County shall require appropriate bonding or other financial security to ensure that the restoration or mitigation is properly completed. If the restoration or mitigation involves planting, the security shall be in effect for a minimum of two (2) years after the date the plantings were established to ensure plant survival. At

the request of the property owner, the County will schedule and conduct periodic inspections as necessary to ensure compliance with the required restoration or mitigation and the release of the security upon successful completion of the required restoration or mitigation. For plants that fail to survive, the minimum two-year period may be extended for an additional period.

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§ 58-11.1 Right of entry.

County Code Compliance Officials, acting within the course and scope of their authority under this Code, may enter upon, over, or through privately owned lands or waters to perform their duties. Except with prior permission from the owner or occupant or as expressly authorized by other provisions of this Code, County Code Compliance Officials may not enter a private dwelling or structure without a Court Order or warrant and while accompanied by a police officer, who shall serve and execute the same.

§ 58-12. Appeals and administrative reviews.

A. Appeals.

An appeal to the Talbot County Board of Appeals (the “Board”) may be filed by any person aggrieved by, any final order, requirement, decision, or determination by any Code Compliance Officer, the Hearing Officer, or Department Head in connection with the administration and enforcement of this Chapter.

- (1) An appeal is taken by filing with the Board of Appeals a written notice of appeal in accordance with Chapter 20, “Board of Appeals” and in accordance with the Board of Appeals Rules of Procedure, accompanied by the appropriate filing fee. Appeals shall be made on forms obtained from the Board of Appeals Secretary. A notice of appeal shall be considered filed with the Board of Appeals when delivered to the Board. The date and time of filing shall be entered on the appeal by the Board of Appeals staff.
- (2) An appeal must be filed within thirty (30) days after the date of the decision or order being appealed.
- (3) An appeal stays all actions by the Chief Code Compliance Officer seeking enforcement or compliance with the order or decision being appealed, unless the Chief Code Compliance Officer certifies to the Board of Appeals that (because of facts stated in the certificate) in his/her opinion, such stay will cause imminent peril to life or property. In such a case, action by the Chief Code Compliance Officer shall not be stayed except by order of the Board of Appeals or a Court upon application of the party seeking the stay.

B. Administrative reviews.

Administrative reviews shall be conducted by the Hearing Officer appointed pursuant to § 58-2 B. in accordance with the provisions of this section.

- (1) Administrative reviews are limited to evaluation of the amounts of civil penalties imposed by the Chief Code Compliance Officer.
- (2) A request for administrative review may be filed by any person aggrieved by the amount of the civil penalty. The request shall be in writing and shall be received by the Hearing Officer within fifteen (15) days after the date the civil penalty was imposed. Failure to file a written request in accordance with the requirements of this section operates as a waiver of the right to request administrative review.
- (3) Promptly upon receipt of a timely request for administrative review, the Hearing Officer shall schedule and conduct a hearing in accordance with Rules of Procedure adopted by Resolution of the County Council.
- (4) The Hearing Officer shall render a written decision based on evidence in the record. The decision may be appealed to the Board of Appeals within thirty (30) days after the date of the decision in accordance with Subsection A., above. An appeal of the Hearing Officer's decision to the Board of Appeals is limited to evaluation of the amount of the civil penalty and any action by the Hearing Officer under § 58-2 B. In any appeal, the Board of Appeals has and may exercise the same authority granted to the Hearing Officer pursuant to § 58-2 B.

* * *

SECTION TWO. Severability. The parts and sub-parts of this ordinance are intended to be severable. If any Court of competent jurisdiction should determine by a valid and final judgment that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional, illegal, or void for any reason, then, notwithstanding that determination, the remaining provisions hereof and the application thereof to all other persons and circumstances shall remain in full force and effect.

SECTION THREE: Effective Date. Be it further enacted, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 1160 having been published, a public hearing was held on Tuesday, January 13, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: January 13, 2009

By Order _____
Secretary

Foster - Nay

Pack - Aye

Duncan - Aye

Bartlett - Aye

Harrison - Nay