

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2016 Legislative Session, Legislative Day No. : June 28, 2016

Bill No.: 1346

Expiration Date: September 1, 2016

Introduced by: Mr. Callahan, Mr. Pack, Ms. Price, Ms. Williams

A BILL TO AMEND TALBOT COUNTY CODE § 58-2, § 58-5, AND § 58-12 TO LIMIT THE HEARING OFFICER'S AUTHORITY TO CONDUCT ADMINISTRATIVE REVIEWS TO CIVIL PENALTIES CLAIMED BY THE COUNTY THAT TOTAL \$5,000 OR LESS, CUMULATIVELY, TO SPECIFY HOW THE JURISDICTIONAL AMOUNT IS DETERMINED, TO PROVIDE THAT THE WRITTEN DECISION OF THE HEARING OFFICER SHALL BE FINAL AND BINDING, AND GENERALLY RELATING TO ADMINISTRATIVE REVIEWS OF AMOUNTS OF CIVIL PENALTIES IMPOSED BY THE COUNTY FOR CODE VIOLATIONS

By the Council: June 28, 2016

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, July 26, 2016 at 6:15 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran
Susan W. Moran, Secretary

A BILL TO AMEND TALBOT COUNTY CODE § 58-2, § 58-5, AND § 58-12 TO LIMIT THE HEARING OFFICER'S AUTHORITY TO CONDUCT ADMINISTRATIVE REVIEWS TO CIVIL PENALTIES CLAIMED BY THE COUNTY THAT TOTAL \$5,000 OR LESS, CUMULATIVELY, TO SPECIFY HOW THE JURISDICTIONAL AMOUNT IS DETERMINED, TO PROVIDE THAT THE WRITTEN DECISION OF THE HEARING OFFICER SHALL BE FINAL AND BINDING, AND GENERALLY RELATING TO ADMINISTRATIVE REVIEWS OF AMOUNTS OF CIVIL PENALTIES IMPOSED BY THE COUNTY FOR CODE VIOLATIONS

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that § 58-2, § 58-5, and § 58-12, Talbot County Code, shall be and are hereby amended as follows:

* * *

§ 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 this Section § 58-2 and § 58-12B, 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.

(C) Jurisdiction. The Hearing Officer's authority to conduct administrative reviews is limited to civil penalties claimed by the County that total \$5,000 or less, cumulatively. The Board of Appeals shall have exclusive jurisdiction to review civil penalties claimed by the County in excess of \$5,000, cumulatively.

(D) The Chief Code Compliance Officer shall certify whether the total amount of the County's claim does or does not exceed \$5,000 cumulatively. Multiple civil penalties, and each daily fine for each day of any continuing violation, shall be aggregated to determine the total amount. The Chief Code Compliance Officer shall have exclusive authority to determine the total amount of the County's claim and his determination shall be final and binding for jurisdictional purposes and shall not be subject to review.

(E) If the total amount of civil penalties claimed by the County does not exceed \$5,000 cumulatively, the Chief Code Compliance Officer shall file a written certification to that effect with the Hearing Officer.

27 (F) The Chief Code Compliance Officer may withdraw any written certification if the total
28 amount of civil penalties the County claims later exceeds \$5,000 cumulatively due to
29 subsequent, additional, or continuing violations or assessments. If a certification is withdrawn
30 the Hearing Officer's authority to conduct an administrative review shall terminate and any
31 hearing shall be cancelled.

32 (G) The Hearing Officer shall have no jurisdiction to conduct an administrative review of
33 any civil penalty or penalties in the absence of the written certification required by Section § 58-
34 2 (D).

35 * * *

36 § 58-5. Civil penalties

37 A. General. Subject to the limitation set forth in Subsection C, below, each offense shall be
38 punishable by a civil penalty of up to \$1,000 per calendar day. The amount of a civil penalty
39 shall be administratively imposed by the Chief Code Compliance Officer ~~pursuant to Art. 24,~~
40 ~~§ 14-101, Maryland Annotated Code,~~ by written notice. The amount of the civil penalty for each
41 violation, including each continuing violation, shall be determined separately. For each
42 continuing violation, the amount of the civil penalty shall be determined per day. Except for
43 Critical Area violations governed by § 58-10.1B, below, to set the amount of a civil penalty the
44 Chief Code Compliance Officer shall consider:

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

48 B. Notice of violations and assessment of civil penalties. Every notice of violation and
49 assessment of a civil penalty shall be in writing and shall include:

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

58 C. Specific amounts. When a section of this Code other than Subsection A, above, establishes a
59 different amount or maximum limit for any violation, the amount or limit so established shall

60 control and the civil penalty imposed pursuant to Subsection A, above, shall not exceed such
61 amount or limit.

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

66 * * *

67 **§ 58-12. Appeals and administrative reviews.**

68 A. Appeals. An appeal to the Talbot County Board of Appeals (the "Board") may be filed by any
69 person aggrieved by any final order, requirement, decision, or determination by any Code
70 Compliance Officer, the Hearing Officer, or department head in connection with the
71 administration and enforcement of this chapter.

72 (1) An appeal is taken by filing with the Board of Appeals a written notice of appeal in
73 accordance with Chapter 20, Board of Appeals, and in accordance with the Board of Appeals
74 Rules of Procedure, accompanied by the appropriate filing fee. Appeals shall be made on
75 forms obtained from the Board of Appeals Secretary. A notice of appeal shall be considered
76 filed with the Board of Appeals when delivered to the Board. The date and time of filing
77 shall be entered on the appeal by the Board of Appeals staff.

78 (2) An appeal must be filed within 30 days after the date of the decision or order being
79 appealed.

80 (3) An appeal stays all actions by the Chief Code Compliance Officer seeking enforcement or
81 compliance with the order or decision being appealed, unless the Chief Code Compliance
82 Officer certifies to the Board of Appeals that (because of facts stated in the certificate) in
83 his/her opinion, such stay will cause imminent peril to life or property. In such a case, action
84 by the Chief Code Compliance Officer shall not be stayed except by order of the Board of
85 Appeals or a court upon application of the party seeking the stay.

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

88 (1) Administrative reviews are limited to evaluation of the amounts of civil penalties
89 ~~imposed by the Chief Code Compliance Officer~~ claimed by the County that do not exceed
90 \$5,000, cumulatively.

91 (2) A request for administrative review may be filed by any person aggrieved by the amount
92 of the civil penalty. The request shall be in writing and shall be received by the Hearing
93 Officer within ~~15~~30 days after the date the civil penalty was imposed. Failure to file a written
94 request in accordance with the requirements of this section operates as a waiver of the right
95 to request administrative review.

96 (3) Promptly upon receipt of a timely request for administrative review, the Hearing Officer
97 shall schedule and conduct a hearing in accordance with rules of procedure adopted by
98 resolution of the County Council.

99 (4) The Hearing Officer shall render a written decision based on evidence in the record. The
100 decision shall be final and binding and shall not be subject to further review. ~~may be~~
101 ~~appealed to the Board of Appeals within 30 days after the date of the decision in accordance~~
102 ~~with Subsection A, above. An appeal of the Hearing Officer's decision to the Board of~~
103 ~~Appeals is limited to evaluation of the amount of the civil penalty and any action by the~~
104 ~~Hearing Officer under § 58-2B. In any appeal, the Board of Appeals has and may exercise~~
105 ~~the same authority granted to the Hearing Officer pursuant to § 58-2B.~~

SECTION THREE: AND BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION FOUR: AND BE IT FURTHER ENACTED, that if any provision of the this ordinance, or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of such Plan which can be given effect without the invalid provision or application, and for this purpose the provisions of this ordinance are declared severable.

SECTION FIVE: AND BE IT FURTHER ENACTED, that the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this ordinance, as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION SIX: AND BE IT FURTHER ENACTED, that this ordinance shall be applicable to and shall govern all enforcement actions by the County for all existing Code violations, including all administrative reviews that are pending when this ordinance is adopted; all such enforcement actions shall be prosecuted and proceed to final decision, determination, and judgment, including all stages of any appeal, in accordance with the jurisdictional limits on the Hearing Officer's authority established by this Ordinance, notwithstanding any other ordinance, rule, regulation, scheduling order, or law to the contrary. In the event of a conflict or inconsistency between this Ordinance and any other statute, ordinance, rule, regulation, scheduling order, or law whatsoever, the terms of this Ordinance shall supersede, control, and resolve any such alleged conflict or inconsistency in favor of the applicability of the provisions of this Ordinance.

SECTION 7: AND 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, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Susan W. Moran, Secretary

Pack -
Williams -
Bartlett -
Price -
Callahan -

Effective date: _____