

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2009 Legislative Session, Legislative Day No. : February 24, 2009

Resolution No.: 161

Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Pack

**A RESOLUTION TO ADOPT RULES OF PROCEDURE FOR ADMINISTRATIVE
REVIEWS OF CIVIL PENALTIES PURSUANT TO CHAPTER 58, TALBOT COUNTY
CODE**

By the Council, February 24, 2009

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, March 24, 2009, at 2:15 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By order, _____
Susan W. Moran, Secretary

A RESOLUTION TO ADOPT RULES OF PROCEDURE FOR ADMINISTRATIVE REVIEWS OF CIVIL PENALTIES PURSUANT TO CHAPTER 58, TALBOT COUNTY CODE

BE IT RESOLVED by the County Council of Talbot County, Maryland, as follows:

1. The Rules of Procedure for Administrative Reviews of Civil Penalties Pursuant to Chapter 58, Talbot County Code, attached hereto and incorporated by reference herein, shall be and are hereby ADOPTED.
2. These Rules of Procedure shall become effective immediately upon adoption of this Resolution.

PUBLIC HEARING

Having been posted and Notice of Time and Place of Hearing and Title of Resolution No. 161 having been published, a public hearing was held on Tuesday, March 24, 2009 at 2:15 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: March 24, 2009

By Order _____
Secretary

Foster -	Nay
Pack -	Aye
Duncan -	Aye
Bartlett -	Aye
Harrison -	Absent



TALBOT COUNTY, MARYLAND

RULES OF PROCEDURE

ADMINISTRATIVE REVIEWS OF CIVIL PENALTIES PURSUANT TO CHAPTER 58, TALBOT COUNTY CODE

Revised: February 24, 2009

**RULES OF PROCEDURE
ADMINISTRATIVE REVIEWS OF CIVIL PENALTIES**

- 1 1. **General.** The following Rules of Procedure apply to Administrative Reviews of civil
2 penalties assessed by the Chief Code Compliance Officer under Chapter 58, Talbot County
3 Code.
- 4 2. **Definitions.** The following definitions apply in these Rules of Procedure:
 - 5 (a) "Administrative Review" -- an administrative hearing conducted by the Hearing Officer
6 to review the amount(s) of civil penalties assessed by the Chief Code Compliance Officer
7 under Chapter 58 of the Code.
 - 8 (b) "Code" -- the Talbot County Code.
 - 9 (c) "Hearing Officer" -- the County official appointed pursuant to § 58-2 B, Talbot County
10 Code, to conduct Administrative Reviews.
 - 11 (d) "Respondent" -- a person who has received a Notice of Violation and Assessment of Civil
12 Penalty for violation(s) of the Talbot County Code.
- 13 3. **Authority.** Section 58-2 B of the Code provides for appointment of a Hearing Officer to
14 conduct Administrative Reviews. Following an Administrative Review, the Hearing Officer
15 may decrease, increase, or confirm the amount of the civil penalty. In addition, the Hearing
16 Officer may modify or impose payment terms, conditions, schedules, or other requirements
17 and may suspend all or any part of any civil penalty.
- 18 4. **Request for Administrative Review.** Requests for an Administrative Review may be filed
19 by any person aggrieved by any Notice of Violation and Assessment of Civil Penalty. All
20 such requests shall be in writing and shall be filed at, and received by, the Talbot County
21 Office of Planning & Zoning, Code Compliance Division, within fifteen (15) days after the
22 date of the Notice of Violation and Assessment of Civil Penalty.
- 23 5. **Notice of hearing.** Respondents shall be given written notice, at least twenty-one (21)
24 calendar days before the date scheduled for the Administrative Review of:
 - 25 (a) The date, time, and place of the hearing;
 - 26 (b) The facts on which the County relies;
 - 27 (c) Which violations(s), if any, are alleged to be continuing violations;
 - 28 (d) The maximum amount of the civil penalties that may be imposed for each violation;
 - 29 (e) The Hearing Officer's authority under § 58-2 B of the Code and Rule 3 above, to
30 decrease, increase, or confirm the amount of the civil penalty, or modify or impose

- 31 payment terms, conditions, schedules, or other requirements, and to suspend all or any
32 part of any civil penalty;
- 33 (f) Respondent’s opportunity to retain legal counsel at their expense to represent them at the
34 hearing; and,
- 35 (g) Except for hearings that are postponed or continued in accordance with these Rules, that
36 the hearing will be held as scheduled even though Respondent fails to attend.
- 37 6. **Public hearing.** Administrative Reviews are open to the public. All persons must maintain
38 order and refrain from disturbing the hearing. The Hearing Officer may order the room
39 cleared of disruptive individuals or recess any hearing from time to time.
- 40 7. **Postponement and continuance.** The Hearing Officer may postpone or continue hearings
41 from time to time as reasonably required by the circumstances.
- 42 (a) Requests for postponements or continuances must be made either in writing before the
43 hearing, or on the record during the hearing. No other requests shall be considered or
44 granted.
- 45 (b) No postponement or continuance shall affect any compliance date or any ongoing civil
46 penalty for continuing violations. At the rescheduled hearing, the Hearing Officer may
47 impose civil penalties for ongoing non-compliance during the interval except:
- 48 (1) where the County requested the postponement or continuance; or,
- 49 (2) where the Respondent requested the postponement or continuance, and:
- 50 i. granting the request is necessary to assure fundamental fairness; and,
- 51 ii. the request was caused by circumstances beyond Respondent’s control.
- 52 8. **Recording.** The County will record each hearing. The Hearing Officer shall maintain a copy
53 of the record for a period of two (2) years. The County will not transcribe testimony except
54 upon written request with an advance deposit for transcription costs for payment of a court
55 reporter retained by the County for that purpose.
- 56 9. **Witnesses.** All persons who offer testimony shall identify themselves, provide their street
57 and mailing address, and take the following oath administered by the Hearing Officer: “Do
58 you solemnly promise or affirm under penalties of perjury to tell the truth in the testimony
59 you are about to give?” All witnesses shall be subject to cross-examination and to
60 questioning by the Hearing Officer.
- 61 10. **Rules of evidence.** The Rules of Evidence, attached hereto as Exhibit “A,” apply in all
62 hearings.
- 63 11. **Order of proceedings.** The order of proceedings shall be as follows, subject to necessary or
64 reasonable changes, as determined by the Hearing Officer:

- 65 (a) The Hearing Officer shall determine from the record whether the notice requirements set
66 forth in Rule 5, above, have or have not been satisfied and shall state his finding on the
67 record.
- 68 (b) The Hearing Officer shall decide any preliminary matters such as requests for
69 continuances or postponements.
- 70 (c) The Hearing Officer shall advise Respondent of:
- 71 (1) The maximum amount of civil penalties that could be imposed;
- 72 (2) The legal authority for imposition of any civil penalties, including reference to the
73 applicable section(s) of the Talbot County Code;
- 74 (3) The Hearing Officer's authority under § 58-2 B of the Code and Rule 3 above, to
75 decrease, increase, or confirm the amount of the civil penalty, or modify or impose
76 payment terms, conditions, schedules, or other requirements, and to suspend all or
77 any part of any civil penalty;
- 78
- 79 (4) Which violations, if any, are alleged to be continuing violations; and,
- 80 (5) Respondent's right to appeal the Hearing Officer's decision to the Talbot County
81 Board of Appeals within thirty (30) days of receipt of the written decision.
- 82 (d) The County shall present its case first. Code Compliance Officers may testify, call
83 witnesses, and provide other evidence. Except for Critical Area violations, all evidence
84 offered shall address only:
- 85 (1) The severity of the violation(s) for which the penalty is to be assessed;
- 86 (2) The presence or absence of good faith; and,
- 87 (3) The history of prior violations.
- 88 (e) For Critical Area violations, all evidence offered shall address only:
- 89 (1) The gravity of the violation;
- 90 (2) The willfulness or negligence, if any, of the violation;
- 91 (3) The environmental impact of the violation; and
- 92 (4) The cost to restore the affected resource, mitigation for damage to that resource, and
93 costs to the State and County for performing, supervising, or assisting with restoration
94 and mitigation.
- 95 (f) At the conclusion of the County's presentation, Respondent may testify, call witnesses,
96 and provide other evidence only to address the applicable criteria listed in Rule 11 (d) or
97 (e), and to respond to the County's presentation.

98 (g) At the conclusion of Respondent's presentation, the County may present rebuttal
99 evidence.

100 12. **Decision.** After considering the testimony and evidence in the record, the Hearing Officer
101 shall evaluate the applicable criteria under Rule 11 (d) or (e).

102 (a) The Hearing Officer shall render a written decision within fourteen (14) calendar days
103 after the hearing and mail it to the Respondent by first-class mail, postage prepaid. The
104 written decision may elaborate upon or modify the oral findings, provided the written
105 decision is based on evidence in the record.

106 (b) The Hearing Officer's written decision shall be a final order subject to appeal to the
107 Board of Appeals within thirty (30) days from the date of the decision.

108 13. **Appeals.** A person aggrieved by a decision of the Hearing Officer may appeal to the Talbot
109 County Board of Appeals within thirty (30) days of the date of the written decision by filing
110 an appeal on a form prescribed by the Board of Appeals.

111 (a) The appeal shall be *de novo* and shall be limited to the applicable criteria set forth in Rule
112 11 (d) or (e), above.

113 (b) Subject to applicable monetary limits, the Board of Appeals has and may exercise the
114 same authority granted to the Hearing Officer under § 58-2 B, of the Code.

115 (c) An appeal does not affect the County's authority to request, or the Board's authority to
116 impose, civil penalties for continuing non-compliance during the interval before the
117 appeal is heard, and thereafter for continuing violations.