



# St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043  
(504) 278-4228 Fax (504) 278-4209  
www.sbpq.net

**Guy McInnis**  
Councilman  
at Large

**George Cavignac**  
Councilman  
at Large

**Ray Lauga, Jr.**  
Councilman  
District A

**Nathan Gorbaty**  
Councilman  
District B

**Richard "Richie" Lewis**  
Councilman  
District C

**Casey W. Hunnicutt**  
Councilman  
District D

**Manuel "Monty"  
Montelongo III**  
Councilman  
District E

**Roxanne Adams**  
Clerk of Council

**#27**

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA ON TUESDAY, AUGUST 19, 2014 AT THREE O'CLOCK P.M.

On motion of Mr. Montelongo, seconded by Mr. Hunnicutt, it was moved to **adopt** the following ordinance:

## **ORDINANCE SBPC #1544-08-14**

### **Summary No. 3121**

Introduced by: Councilman Hunnicutt on 8/5/14  
Executive Finance Committee **tabled** on 8/14/14 until 8/28/14  
Public hearing held on 8/19/14

AN ORDINANCE TO CREATE AND INSERT CHAPTER 2.5, ADMINISTRATIVE ADJUDICATION OF PUBLIC HEALTH, HOUSING, FIRE CODE, ENVIRONMENTAL AND HISTORIC DISTRICT VIOLATIONS TO THE ST. BERNARD PARISH CODE OF ORDINANCES.

ST. BERNARD PARISH COUNCIL DOES HEREBY ORDAIN:

**SECTION 1.** The St. Bernard Parish Council hereby create and insert the attached "Exhibit A" creating a new Chapter 2.5 Administrative Adjudication of Public Health, Housing, Fire Code, Environmental and Historic District Violations to the St. Bernard Parish Code of Ordinances.

**SECTION 2.** Effective Date. This Ordinance shall become effective immediately upon authorizing signature by the Parish President. In the event of a presidential veto, this Ordinance shall become effective upon a two-thirds favorable vote of the total membership of the Council pursuant to Sections 2-11 and 2-13 of the St. Bernard Parish Home Rule Charter.

**SECTION 3.** Severability. If any section, clause, paragraph, provision or portion of this ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, paragraph, provision or portion of this Ordinance, the St. Bernard Parish Council hereby expresses and declares that it would have adopted the remaining portion this Ordinance with the invalid portions omitted.



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Extract #27, continued  
August 19, 2014

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The above and foregoing having been submitted to a vote, the vote thereupon resulted as follows:

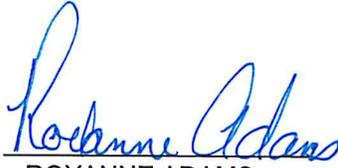
**YEAS:** Lauga, Gorbaty, Hunnicutt, Montelongo

**NAYS:** Lewis

**ABSENT:** Cavignac

The Council Chair, Mr. McInnis, cast his vote as **YEA**.

And the motion was declared **adopted** on the 19<sup>th</sup> day of August, 2014.

  
ROXANNE ADAMS  
CLERK OF COUNCIL

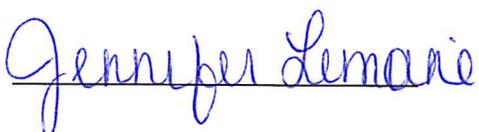
  
GUY MCINNIS  
COUNCIL CHAIR

Delivered to the Parish President 8/22/2014 9:30AM  
Date and Time

Approved ✓ Vetoed \_\_\_\_\_

Parish President   
David E. Peralta

Returned to Clerk of the Council 8/22/2014 9:40AM  
Date and Time

Received by 

Ordinance SBPC #1544-08-14  
Summary No. 3121  
Exhibit "A"  
St. Bernard Parish, Louisiana, Code of Ordinances  
PART II - CODE OF ORDINANCES  
Chapter 2.5 ADMINISTRATIVE ADJUDICATION

**Chapter 2.5 ADMINISTRATIVE ADJUDICATION OF PUBLIC HEALTH, HOUSING, FIRE CODE,  
ENVIRONMENTAL AND HISTORIC DISTRICT VIOLATIONS**

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Sec. 2.5-1. Administrative adjudication authorization.

Sec. 2.5-2. Definitions.

Sec. 2.5-3. Hearing officer(s).

Sec. 2.5-4. Authority of hearing officer.

Sec. 2.5-5. Parish attorney to assist.

Sec. 2.5-6. Powers.

Sec. 2.5-7. Hearing procedures.

Sec. 2.5-8. Non-exclusivity of procedures.

Sec. 2.5-9. Liens.

Sec. 2.5-10. Appeal.

Sec. 2.5-11. Term and Removal of Hearing Officer(s).

Sec. 2.5-12. Record requirements.

**Sec. 2.5-1. Administrative adjudication authorization.**

Any agency or department of the Parish of St. Bernard having a responsibility for the enforcement of any public health, housing, fire code, environmental, or historic district ordinance, or any matters involving licensing and permits and any other ordinance violations that may be determined by the St. Bernard Parish Council, may impose civil fines, civil penalties and hearing costs for violations of such ordinances by the owners of immovable property or their agents, tenants or representatives pursuant to the procedures for administrative adjudication established in this chapter.

**Sec. 2.5-2. Definitions.**

The following definitions shall apply in the interpretation of this article:

*Director* shall mean the head of a parish agency or department which enforces any public health, housing, fire code, environment or historic district ordinance in the parish, or his designated representative.

*Housing violation* shall encompass building codes, zoning, vegetation, and nuisance ordinances.

*Decision* or *order* shall mean an administrative act of the hearing officer under authority of this chapter.

*Respondent* or *alleged violator* shall mean the owner of the property and any known tenant or lessee of the property and other party(s) with a legal interest in and to the property and who has been given a notice of violation under this chapter.

*Violator* shall mean a person who has been found liable for a violation or ordered to correct a violation in an order issued under this chapter.

**Sec. 2.5-3. Hearing officer(s).**

- (a) Hearing officer(s) shall be appointed by the St. Bernard Parish Council.
- (b) All hearing officers shall be sworn before the parish attorney to uphold the Constitution and laws of the State of Louisiana and the Charter and ordinances of the parish, and to abide by the provisions of the Louisiana Code of Governmental Ethics before assuming office.
- (c) Any staff needed shall be appointed by the St. Bernard Parish Council

**Sec. 2.5-4. Authority of hearing officer.**

Hearing officers who have been appointed and sworn in accordance with section 2.5-3 of this chapter shall have the authority to hear and decide all cases and controversy that involve a violation of the St. Bernard Parish Code of ordinances or any other matter involving licensing and permits. Adjudication authority of the hearing officer shall include, but not be limited to, violations of the following chapters or sections of this code and other and other miscellaneous codes:

- (a) Chapter 3 Alcoholic Beverages
- (b) Chapter 4 Animals and Fowl
- (c) Chapter 5 Buildings; Construction and Related Activities
- (d) Chapter 6 Cemeteries
- (e) Chapter 7.5 Discrimination
- (f) Chapter 10.5 Flood Damage Prevention
- (g) Chapter 11 Health and Sanitation
- (h) Chapter 11.5 Historic District
- (i) Chapter 12 Mobile Homes and Mobile Home Parks
- (j) Chapter 13 Occupational License, Taxes and Regulations
- (k) Chapter 14 Offenses and Miscellaneous Provisions
- (l) Chapter 16 Parks and Recreation

- (m) Chapter 19 Streets and Other Public Ways
- (n) Chapter 20 Traffic
- (o) Chapter 21 Vehicles For Hire
- (p) Chapter 22 Zoning

**Sec. 2.5-5. Parish attorney to assist.**

No administrative adjudication proceeding shall be instituted under this chapter with respect to any ordinance unless the ordinance is cited in section 2.5-4. The legal department may institute legal actions for the enforcement of any violation covered in section 2.5-4.

**Sec. 2.5-6. Powers.**

The hearing officer shall have the power to:

- (a) Administer oaths and affirmations;
- (b) Issue orders compelling the attendance of witnesses, respondents and violators and the production of documents;
- (c) Levy fines and hearing costs, the total of which shall not exceed the maximum established for the parish courts of St. Bernard Parish;
- (d) Order violators to correct violations within a stipulated time;
- (e) Take necessary and lawful measures to effect corrections of the violations if the violator fails to do so within the time allocated by the hearing officer;
- (f) Place liens, pursuant to section 2.5-9 of this chapter, against the immovable property located within the parish, if the violator fails to remit payment for any costs and/or fines, within thirty (30) days of the levy of the same;
- (g) If any person fails to comply with a subpoena issued by the parish council or if a witness refuses to testify in any matter regarding which he/she may be lawfully interrogated, Hearing Officer, after hearing, shall adjudge him/her guilty of contempt and may fine him/her not more than two hundred dollars (\$200.00).

**Sec. 2.5-7. Hearing procedures.**

- (a) Prior to holding an administrative hearing, for any issue governed by section 2.5-4, the administration shall notify the property owner and may notify any known tenant or lessee of any violation alleged a minimum of twenty (20) days prior to a hearing date. Notice of the alleged violation shall be posted on the property and mailed via US First Class mail, postage pre-paid, to the owner. The clerk for the bureau of administrative adjudication shall cause notice of a scheduled hearing to be sent at least fifteen (15) days in advance of the hearing date. Ownership and lessee information shall be obtained via the records located in St. Bernard Parish Mortgage and Conveyance Office, the Sheriff's Office or the St. Bernard Parish Public Works Department. The hearing notification shall state the time,

date and location of the hearing, and state the alleged violations; and it shall be sent by certified or registered U.S. mail to the owner, and the violator if he/she is not the owner, or personally served on the owner and/or violator at the address(es) as listed in the assessor's office of the parish or address obtained from other reliable source upon verifying ownership and/or tenancy information with the mortgage and conveyance office and/or sheriff's office or other reliable source and at any additional address if the enforcement agency desires to have service made at multiple addresses. The date of the postmark shall be deemed to be the date of delivery which will be a minimum of fifteen (15) days prior to the scheduled hearing. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. Proof of notification via mail, posting of notices and attempts at service shall be entered in the record of each case prior to the hearing.

- (b) In addition to the personal or mail service required by paragraph (a) of this section, if a violation relates to property, a copy of the hearing notice shall be affixed in a prominent location on the property on which a violation is alleged, or if safe access to the property is not reasonably practicable, on some prominent fixture on the adjacent public right-of-way as near as possible to the property, at least five (5) days in advance of the date of the hearing. It shall be unlawful for any person other than an agent of the parish to remove such notice posted on the public right-of-way prior to the commencement of the hearing.
- (c) The notice of violation shall be, as much as possible, in laymen's language susceptible of understanding by a person of normal capacity, and shall, in large print, inform the person noticed of the need to appear and the risk of penalties and liens being imposed.
- (d) Failure of any person charged with a violation to appear at the hearing shall be considered an admission of liability for the charged violation; provided that the notice requirements established in paragraphs (a), (b) and (c) of this section have been satisfied, and provided further that a hearing officer, in his sound discretion and for good cause shown, may vacate an order issued on the basis of such an admission and re-open the proceedings, and shall do so when requested by the appropriate director.
- (e) Any order compelling the attendance of witnesses or the production of documents shall be enforced by the proper parish court of the Parish of St. Bernard or by any other court of competent jurisdiction, in the same manner as any subpoena in a civil manner.
- (f) Complaints may be initiated by the public and violation notices will be issued upon the submission of affidavits and/or documentary evidence sufficient to prove the existence of health, housing, fire code, environmental, or historic district ordinance violations, or any matters involving licensing and permits and any other ordinance violations that may be determined by the St. Bernard Parish Council, as determined by the enforcement agency or department director.
- (g) Any administrative adjudication hearing held under the provisions of this chapter shall be conducted in accordance with the rules of evidence of the Administrative Procedure Act. Testimony of any person shall be taken under oath, and shall be recorded. The person charged with the ordinance violation may present any relevant evidence and testimony at

such hearing and may be represented by an attorney at law. However, his/her physical presence shall not be required at the hearing, and a failure to appear shall not be deemed an admission under paragraph (d) of this section, if documentary evidence, duly verified by such person, is submitted to the hearing officer prior to the date of the hearing.

- (h) In determining the amount of any fine or penalty, the hearing officer shall consider the age, financial circumstances and physical and mental capacity of the violator and the degree of hardship which the fine or penalty will impose, and shall weigh those factors against the degree of culpability of the violator and the gravity of the offense, and the damage to the public health, safety, welfare, and convenience and the cost to the parish or to others occasioned by the offense. However, if the hearing officer finds the violator liable he/she must proscribe at least a penalty of court costs.
- (i) At the close of the hearing, the hearing officer shall issue a final order stating whether or not the person charged is liable for the violation, the amount of hearing costs, any fine or costs assessed against him or her and a date by which the violation(s) shall be corrected. If a matter is taken under advisement by the hearing officer, said order shall be issued not more than thirty (30) legal days of the close of the hearing. The final order shall be served via certified or registered mail to the parties the hearing notice was served. The final order shall notify the violator of the right of appeal. The date of the postmark shall be deemed to be the date of delivery and considered as having fulfilled the notification of order requirement.
- (j) The hearing officer may, for each separate violation, order the payment of fines and hearing costs, the total of which shall not exceed the maximum which may be imposed on a misdemeanor by the parish courts; provided, however, that no civil fines or hearing costs imposed may exceed those specified for the criminal violation of the same ordinance. All such fines and costs shall be paid into the general fund, unless it is otherwise provided by law.
- (k) The director of finance or his designee shall collect all fines and penalties decreed by the hearing officer.
- (l) The hearing officer, for good cause, may suspend all or a portion of his final order and may make any suspension contingent on the fulfillment of some reasonable condition.
- (m) In cases where the hearing officer or director has reason to believe that an order will cause dislocation or other hardship to a violator, or some other person, the director shall furnish a copy of the order and a brief statement to the nature of the hardship to the office of the parish president and to any other public or private officer or agency he deems appropriate.
- (n) Interlocutory orders shall be served in the manner provided by any specifically applicable state law or, if no other law applies, by a duly commissioned peace officer by personal or domiciliary service; provided that interlocutory orders may be served by mail on a respondent who has actually been served with a notice of violation or who has made an appearance.
- (o) Any order assessing a fine or costs and/or ordering remediation or corrective action on or prior to a certain date may be enforced by the Parish Courts of St. Bernard Parish. The

parish's Legal Department may file contempt or other enforcement proceedings by making an order executory in the thirty-fourth Judicial District Court.

- (p) Should the Hearing Officer have a conflict of interest, the matter shall be removed to the 34th Judicial District Court.

#### **Sec. 2.5-8. Non-exclusivity of procedures.**

The procedures and remedies established by this chapter shall not be deemed exclusive and may be employed in the civil enforcement of an ordinance before, during or after the employment of any other civil enforcement mechanism provided by law, or before, during or after the commencement or conclusion of enforcement action in a civil or criminal court, unless the civil courts have definitely exonerated the alleged violator of the violation charged.

#### **Sec. 2.5-9. Liens.**

The director or the hearing officer may record a certified copy of an order imposing a fine or other charge in the public records of the parish. Once recorded, the certified copy of this order shall constitute a lien against the land on which the violation exists, and any lien placed against such immovable property under this chapter shall be included in the next annual ad valorem tax bill and must be paid along with such taxes, subject, however, to any valid homestead exemption. Failure to pay the liens shall cause any parcel of immovable property which is not subject to a bona fide homestead exemption to be subject to the same provisions of law as govern tax sales of immovable property. Any lien placed against immovable property that has a legal homestead exemption from taxes will become payable ninety (90) days after the death of the owner thereof or immediately upon transfer of title to a new owner, whichever comes first.

#### **Sec. 2.5-10. Appeal.**

Any party aggrieved by a decision of the hearing officer pursuant to this chapter may appeal this determination to the Thirty-Fourth Judicial District Court of the Parish of St. Bernard.

- (a) *Appealable orders.*
  - (i) A final order is appealable and may be suspensive or devolutive.
  - (ii) An appeal cannot be taken by a party who entered into a consent agreement or consent order.
- (b) *Filing an appeal.*
  - (i) An appeal shall be instituted by filing, within thirty (30) days of the date the hearing officer signed the order, a petition for appeal, including requests for the Thirty-Fourth Judicial District Court (34th JDC) to set dates petitioner deems necessary relative to filing answers, briefs, memorandums, motions, and/or a hearing date, with the Clerk of the 34th JDC along with payment of costs required by the clerk of court for the filing of the appeal. The return date for the bureau of administrative adjudication to file the record including the transcript (if requested) is thirty

- (30) days from the date all costs are paid to the Clerk of the 34th JDC and the Bureau of Administrative Adjudication.
- (ii) The petitioner shall request service of the petition for appeal on the director of the department through the parish attorney and the bureau of administrative adjudication through the named hearing officer at the office address.
  - (iii) Service of the appeal shall not stay the enforcement and collection of the order unless the petitioner furnishes to the bureau of administrative adjudication, for deposit, security sufficient to assure satisfaction of the finding of the hearing officer relative to the fines and costs assessed and any costs of correcting the violation(s) within thirty (30) days of the date the hearing officer signed the order or within ten (10) days of the postmark on the notice of the estimated security cost letter mailed via certified mail, whichever is later. Extensions for payment of security to secure a suspensive appeal shall not be granted. Security may be waived in the case of those determined eligible to proceed in forma pauperis by the clerk of court.
  - (iv) Upon receipt of the petition for appeal, the bureau of administrative adjudication shall calculate the estimated cost for preparing the record, cost of the transcript and security and submit in writing. Security includes hearing costs and/or estimated fines, cost of preparing the record and/or estimated costs to remediate the violation(s), the total of which shall serve as the cost required for a suspensive appeal. Failure of the petitioner to timely pay all costs due to the bureau of administrative adjudication and the St. Bernard Parish Clerk of Court may result in the appeal being dismissed or becoming a devolutive appeal.
  - (v) A suspensive appeal is an appeal that suspends the effect or the execution of an appealable order, and the security required is for the amount of the order including costs of remediation, hearing costs and fines.
  - (vi) A devolutive appeal does not suspend the effects or execution of an appealable order. Security is not required. However, the hearing will not be transcribed and/or lodged with the record until estimated costs are paid for transcription to the bureau of administrative adjudication pursuant to the mailing of the estimated appeal cost letter.
  - (vii) Estimated security costs are payable to St. Bernard Parish for deposit in escrow with the department of finance.
  - (viii) Should the cost for preparation of the record, transcript, suspended fines and/or remediation of violations exceed what was paid or quoted, a letter will be mailed advising of the additional costs due.

- (ix) The bureau of administrative adjudication shall have the duty of preparing the record and lodging the record and transcript with the 34th JDC on or before the return day. Failure of the bureau of administrative adjudication to prepare and lodge the record on appeal either timely or correctly shall not prejudice the appeal unless it is for failure of the petitioner to pay estimated costs.
- (x) An extension of the return day shall be for cause only and does not include petitioners' failure to pay the estimated cost of transcribing the record. If the return day is extended, notice shall be given by the bureau of administrative adjudication via certified or registered mail to all parties.
- (xi) Should the transcript not be ready for lodging with the record, whether for failure of petitioner to pay transcript costs or other cause, the bureau of administrative adjudication shall file a notice or request for an extension of the return date advising that the record is ready for lodging except for the transcript, if requested, and the reason for not including the transcript with the record.
- (xii) Petitioner is responsible for all costs associated with the appeal including the cost to file the appeal and fees required by the clerk of court for lodging the record which may include the transcript and the file from the original hearing.
- (xiii) Costs for security including the suspended fines and cost of remediation and the transcript are an estimate, when the preparation of the record has been completed, the bureau of administrative adjudication shall, either refund to the petitioner the difference between the estimated costs and the actual costs if the estimated costs exceed the actual costs, or send a notice by certified mail to the petitioner of the amount of additional costs due, if the actual costs exceed the estimated costs. If the payment of additional costs is required, the petitioner shall pay the amount of additional costs within ten (10) days of the mailing of the notice.
- (xiv) Failure of the petitioner to pay the estimated cost for preparing the record including the transcript or the difference between the estimated costs and the actual costs, within the time specified, the hearing officer on his own motion or upon motion by the clerk or by any party, may request dismissal of the appeal and/or fines on the grounds of abandonment.
- (xv) After the petition for appeal has been filed, costs and/or security paid, the record lodged and, any, pleadings or briefs filed, a hearing shall be scheduled, if requested by petitioner, and all parties notified of the date, time and place of such hearing.
- (xvi) All records, original and/or supplemental, prepared for filing shall be certified and dated by the clerk. The certification shall include the date any transcript was received for inclusion in the record.

- (xvii) All transcripts completed for inclusion in the record shall be dated and certified by the person who prepares them,
- (xviii) Should the order of the bureau of administrative adjudication be upheld and affirmed, the parish attorney's office shall submit an actual costs letter or notice for per day fines or other monies that may be due to the petitioner for payment.

**Sec. 2.5-11. Term and Removal of Hearing Officer(s).**

- (a) The Hearing Officer(s) shall serve for a term of one year, starting from the date of appointment by the St. Bernard Parish Council.
- (b) The Hearing Officer(s) shall only be removed from office for:
  - (1) In ability to perform the duties of office;
  - (2) Conviction of a felony or
  - (3) by a 2/3 majority vote of the St. Bernard Parish Council for good cause.

**Sec. 2.5-12. Record requirements.**

- (a) At its commencement by notice to the alleged violator, every civil adjudication proceeding shall be assigned a docket number and a style in the form of "in the manner of" or in the form of "Parish of St. Bernard versus" followed by the name of the alleged violator. The records pertaining to each proceeding shall be maintained as a separate file in a manner similar to the fashion in which the clerks of court maintain the records of civil cases.
- (b) Each agency charged with the enforcement of an ordinance within the scope of this chapter shall, with the advise of the department of law, maintain a log or index of all civil adjudication proceedings, which shall set forth information including but not limited to the following:
  - (1) The style and docket number of the case and the date it was commenced;
  - (2) The ordinance or ordinances allegedly violated;
  - (3) The date or dates of the alleged violations;
  - (4) The address(es) or other description of the property on which the alleged violation(s) occurred;
  - (5) A statement as to whether any civil or criminal court proceedings pertaining to the alleged violations are or were pending, the dates of any hearings, trials, or continuances, and the dates of their commencement and/or termination and, if the case is terminated, of its final disposition;
  - (6) A statement as to the dates of any hearing and of any final order in the case and as to whether and when any lien was filed;
  - (7) A statement as to the date of filing and disposition of any appeal.

The department or agency shall review this log or index quarterly to ensure that no civil or criminal remedies of the parish are unwittingly permitted to prescribe.