

Chapter 25

CODE ENFORCEMENT

[HISTORY: Adopted by the Town Council of the Town of Callahan 12-20-1999 by Ord. No. 9-O-1998. Amendments noted where applicable.]

ARTICLE I In General

§ 25-1. Civil offenses and penalties; hearing officers.

The violation of any Town ordinance listed in § 25-37 of this chapter shall constitute a civil offense punishable by civil penalty in the amount prescribed in § 25-37 and as modified by § 25-31 of this chapter. Accordingly, there is hereby created and established a code enforcement position to be filled by hearing officers to enforce the ordinances listed in § 25-37 which are contained in and enacted pursuant to this Code.

§ 25-2. through § 25-15. (Reserved)

ARTICLE II Code Enforcement Hearing Officer System

§ 25-16. Qualifications, appointment, removal and compensation of hearing officers; organization.

- A. Hearing officers shall be residents of the Town of Callahan, Florida, who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the Mayor or his designee on the basis of experience or interest in code enforcement. Such appointments shall be submitted by the Mayor for ratification by the Town Council. [Amended 1-2-2000 by Ord. No. 1-O-2000]
- B. The Mayor or his designee shall appoint as many hearing officers as are deemed necessary. Appointments shall be made for a term of one year. Any hearing officer may be reappointed at the discretion of the Mayor, subject to ratification by the Town Council. There shall be no limit on the number of reappointments that may be given to any individual hearing officer; provided, however, that a determination as to removal or reappointment must be made for each hearing officer at the end of each of his one-year terms. The Mayor shall have authority to remove hearing officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.
- C. Hearing officers shall not be Town employees but shall be compensated at a rate to be determined by resolution.
- D. The Town Attorney may serve as general counsel to the hearing officers. If an appeal as to Circuit Court is requested pursuant to § 25-35, the Town Attorney shall represent the Town at such proceedings.

§ 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 Town 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 legally responsible for the violation of the ordinances listed in § 25-37.
- D. A Code Inspector who finds a violation of the ordinances of this Code listed in § 25-37 shall determine a reasonable time period within which the violator must correct the violation. 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 deemed to be an uncorrectable violation.
- E. A Code Inspector who finds such violation shall issue a civil violation notice to the violator. Service shall be effected by delivering the civil violation notice to the violator or his agent, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is 15 years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed. Such posting of the civil violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted. Such posting of the civil violation notice shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted.
- F. The civil violation notice shall include but not be limited to the following:
 - (1) Date 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 date 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 20 days, or within the specified time period listed for a violation of a specific section of the Code, after service 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.

§ 25-18. through § 25-30. (Reserved)

**ARTICLE III
Hearings, Penalties and Appeals**

§ 25-31. Types of violations; imposition of civil penalties.

- 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 § 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 rather than an ongoing condition or 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 Subsection 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. [Amended 6-18-2001 by Ord. No. 2-O-2001]
- D. A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been found guilty of the same violation. 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 § 25-37. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty payable for the first day of any one repeat violation.
- E. A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation, and the additional

penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation.

- F. Continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made if a request for administrative hearing is not timely filed. 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 § 25-17D. 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.
- G. Civil penalties assessed pursuant to this chapter are due and payable to the Callahan Town Clerk on the last day of the period allowed for the filing of an appeal from the hearing officer's decision or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

§ 25-32. Rights of violators; payment of fine; right to appeal; failure to pay and correct or appeal.

- A. A violator who has been served with a civil violation notice shall elect either to:
 - (1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or
 - (2) Request an administrative hearing before a hearing officer to appeal the decision of the Code Inspector which resulted in the issuance of the civil violation notice.
- B. Appeal by administrative hearing of the notice of violation before a hearing officer shall be accomplished by filing a request in writing to the address indicated on the notice, within the time limit stipulated in the specified Code section which is enforced pursuant to the provisions of this chapter, or no later than 20 calendar days after the service of the notice, whichever is earlier.
- C. If the named violator, after notice, fails to pay the civil penalty and correct the violation within the time specified (if applicable), or fails to timely request an administrative hearing before a hearing officer, the hearing officer shall be informed of such failure by report from the Code Inspector. If the named violator pays the civil penalty for a correctable violation but does not correct that violation within the time specified, each day that the violation continues beyond such specified time shall constitute a continuing violation. Failure of the named violator to appeal the decision of the Code Inspector within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the hearing officer. A waiver of the right to administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

§ 25-33. Scheduling and conduct of hearing.

- A. Upon receipt of a named violator's timely request for an administrative hearing, the hearing

officer 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 shall send a notice of hearing by first class mail to the named violator at his last known address. 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 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 Callahan Zoning Administrator. No hearing shall be set sooner than 20 calendar days from the date of service of the notice of violation. [Amended 1-2-2000 by Ord. No. 1-O-2000]
- 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 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. 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.
- G. The Callahan Zoning Administrator shall provide clerical and administrative personnel as may be reasonably required by each hearing officer for the proper performance of his duties. [Amended 1-2-2000 by Ord. No. 1-O-2000]
- H. Each case before a hearing officer shall be presented by the Mayor or his designee.
- I. The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. 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. 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, at the discretion of the hearing officer.
- 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 can be held responsible for that violation. Based upon this fact-finding determination, the hearing officer shall either affirm or reverse the decision of the Code Inspector as to the responsibility of the named violator for the Code violation. If the hearing officer affirms the decision of the Code Inspector, the hearing officer, pursuant to Section § 25-17D, shall determine a reasonable time period within which correction of the violation must be made. 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 for the hearing officer's findings pursuant to § 25-35. If the decision of the hearing officer is to affirm, then the following elements shall be included:
 - (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).
- 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 or by the staff of the hearing officer.
 - (3) Subpoena evidence.
 - (4) Take testimony under oath.
 - (5) Assess and order the payment of civil penalties as provided herein.
- O. Administrative appeals.
 - (1) A hearing officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized Town board of appropriate jurisdiction an administrative appeal concerning the interpretation or application of any technical provisions of the Code section allegedly violated. However, once an issued had been determined by a hearing officer in a specific case,

that issue may not be further reviewed by a Town board in that specific case. A named violator waives his right to administrative appeal to other Town 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 administrator 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 Town boards concerning the provisions of the codes within their respective Town 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. [Amended 1-2-2000 by Ord. No. 1-O-2000]

§ 25-34. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

- A. The Town of Callahan, Florida, may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- B. A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own land, upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After one year from the filing of any such lien which remains unpaid, the Town of Callahan, Florida, may foreclose on or otherwise execute the lien.

§ 25-35. Appeals.

- A. The named violator or the Town may appeal a final order of the hearing officer for all violations by filing notice of appeal in the Circuit Court in and for Nassau County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.
- B. Unless the findings of the hearing officer are overturned in a proceeding held pursuant to Subsection A, all findings of the hearing officer shall be admissible in any proceeding to collect unpaid penalties.

§ 25-36. Provisions contained herein are supplemental. [Amended 1-2-2000 by Ord. No. 1-O-2000]

Nothing contained in this chapter shall prohibit the Town from enforcing its Code by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this Code.

§ 25-37. Schedule of civil penalties.

- A. The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.
- B. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 25, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Chapter or Section	Description of Violation	Civil Penalty
Chapter 152	Violation of the sign requirements set forth in Chapter 152 of the Callahan Code	\$150/day unless justified, in writing, by hearing officer
Chapter 190	Violation of the water and sewer requirements for interceptors, separators, backwater valves, and grease traps	\$150/day unless justified, in writing, by hearing officer
Chapter 195	Violation of Building Department fee schedule/permit requirements and violation of zoning requirements	\$150/day unless justified, in writing, by hearing officer
Chapter 157, Article I	Violation of requirements for outside temporary containers	\$150/day unless justified, in writing, by hearing officer