

1 **BY COUNCIL MEMBER ROSS**

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3
4 **PROPOSED ORDINANCE NO. 2009-_____**

5
6 **TO ENACT CHAPTER 12 OF TITLE 12 RELATIVE TO**
7 **THE ADMINISTRATIVE HEARINGS OF ALLEGED**
8 **VIOLATIONS OF ORDINANCES REGULATING PUBLIC**
9 **HEALTH, ENVIRONMENT, HOUSING, BUILDING CODES**
10 **AND FIRE CODES AND TO PROVIDE FOR RELATED**
11 **MATTERS**

12
13 BE IT ORDAINED by the Council of the City of Central, State of Louisiana as follows:

14
15 **Section 1.** Chapter 12 of Title 12 relative to the administrative hearings of alleged violations of
16 ordinances regulating public health, environment, housing, building codes and fire codes is
17 hereby enacted to read as follows:

18
19 **Sec. 12:701. Administrative hearings**

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21 Alleged violations of ordinances regulating public health, environment, housing,
22 building codes and fire code of the City of Central may be adjudicated pursuant to the
23 provisions of this Chapter.

24
25 **Sec. 12:703. Hearing officers**

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27 (a) The Mayor shall appoint one or more hearing officers who have practiced law for
28 at least two (2) years who shall serve at the discretion of the Mayor.
29 (b) All hearing officers so appointed shall take an oath of office to uphold the
30 constitution and laws of the state and City ordinances, and to abide by the
31 provisions of the Louisiana Code of Governmental Ethics prior to assuming
32 office.

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34 **Sec. 12:705. Powers of hearing officers**

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36 Each hearing officer appointed shall have authority granted by La. R.S. 13:2575
37 including, but not limited to, the authority to:

- 38 (a) Administer oaths and affirmations.
39 (b) Issue orders compelling the attendance of witnesses and defendants and the
40 production of documents.
41 (c) For each separate violation, levy fines, fees, penalties, and hearing costs.
42 (d) Order violators to correct violations within a stipulated time.
43 (e) Take necessary and lawful measures to effect correction of the violation if the
44 violator fails to do so within the time allocated by the hearing officer.
45 (f) Record orders, judgments, notices of judgments, or liens in the mortgage office
46 of the parish.

1 (g) Place liens and privileges upon property as authorized by La. R.S. 13:2575 and
2 this Chapter.
3

4 **Sec. 12:707. Authority of hearing officers**
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6 Hearing officers shall have authority to hear and decide alleged violations of
7 public health, environment, housing, building code and fire code ordinances and of any
8 other ordinances which the City of Central Council may, from time to time, declare to be
9 subject to administrative hearing.
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11 **Sec. 12:709. Hearing procedure**
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- 13 (a) Prior to holding an administrative hearing pursuant to this Chapter, the City shall
14 deliver notice to the individual or entity alleged to be in violation notifying them
15 of the alleged violation and of the date, time and place of the hearing to be
16 conducted at least fifteen days in advance of the hearing date. The notice shall
17 state that if the violation is abated prior to the hearing, the hearing may be
18 canceled. The notice shall state the time, date and location of the hearing, and
19 shall describe the alleged violation. The notice shall state that the alleged violator
20 is entitled to legal representation, shall state the amount or nature of possible
21 penalties, and provide information to permit the violator to communicate with the
22 enforcement department prior to the hearing. The notice shall also state that
23 failure to appear at the hearing shall constitute an admission of the charged
24 violation; however, the hearing officer may vacate any order issued on the basis
25 of a failure to appear if in the officer's sound discretion the interest of justice
26 requires a hearing.
- 27 (b) The notice shall be served upon the alleged violator, and where applicable, upon
28 the owner of the property, by certified mail or registered mail, addressed to the
29 alleged violator, and where relevant, to the owner at the address listed in the
30 assessor's office, or may be personally served upon the alleged violator or the
31 owner of the property. The date of the postmark shall be deemed to be the date of
32 delivery. Any notification so sent and returned by the United States Post Office
33 shall be considered as having fulfilled the notification requirement. The failure of
34 any person charged with a violation to appear at the hearing shall be considered
35 an admission of liability for the charged violation.
- 36 (c) Administrative hearings shall be conducted in accordance with the rules of
37 evidence of the Louisiana Administrative Procedure Act. Testimony by any
38 person shall be under oath. The person charged with the violation may present
39 any relevant evidence and may be represented by an attorney at law. However,
40 the alleged violator's physical presence shall not be required at the hearing if
41 documentary evidence, duly verified by such person, is submitted to the hearing
42 officer prior to the date of the hearing. Evidence on behalf of the City shall be
43 presented by the City Attorney or his/her designee. Any order compelling the
44 attendance of witnesses or the production of documents may be enforced by the
45 City of Central Mayor's Court or the district court having jurisdiction over the
46 witness. The burden of proof shall be upon the City and a finding that the alleged

1 violator did violate the ordinance as charged must be based upon a preponderance
2 of the evidence. Where finding of a violation is based upon the alleged violator's
3 failure to appear at the hearing, the decision shall be based upon a prima facie
4 showing of violation.

5 (d) The hearing officer shall issue a written order within thirty days, excluding legal
6 holidays, of the hearing stating whether or not the person charged is liable for the
7 violation, the amount of any civil fine and costs assessed and a date by which the
8 violation shall be corrected, if applicable. The order may be served upon the
9 violator either by personal service or by regular mail, or if the violator has counsel
10 of record, by mailing or delivering the order to counsel. If the order requires that
11 the violation be corrected, this order shall be an interlocutory order. If the order
12 does not require abatement of the violation, this shall be the final order. If final,
13 the order shall specify the penalties, costs, fees, and fines assessed, and shall
14 notify the violator of his right to appeal.

15 (e) In addition to the enforcement procedure and authority set forth in this Chapter,
16 the City Attorney is authorized to file a civil action in the Nineteenth Judicial
17 District Court to enforce the orders of the hearing officer if the violator fails to
18 pay the fines, costs or penalties fixed by the hearing officer, or fails to correct the
19 violation as ordered by the hearing officer.

20 (f) Where the violator fails to abate the violation after being ordered to do so by the
21 hearing officer, the City may undertake to correct the violation, and the cost of
22 such shall be made available to the hearing officer who may impose that amount
23 upon the violator as a cost, and who shall issue a final order which shall set out all
24 penalties, fees and costs imposed.

25 (g) The final order shall be served upon the alleged violator in the same manner in
26 which the notice was served.

27 (h) Penalties, fees and costs shall be collected by the City.

28 (i) The hearing officer, for good cause, may suspend all or a portion of his final order
29 and may make any suspension contingent on the fulfillment of some reasonable
30 condition.

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32 **Sec. 12:711. Appeal**

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34 An appeal of a hearing officer's order shall be filed pursuant to La. R.S.
35 13:2575(H).

36
37 **Sec. 12:713. Remedy**

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39 (a) The City shall have a lien and privilege against the immovable property in or in
40 which the violation occurred. The lien and privilege shall secure all fines and costs
41 assessed in accordance with this Section and described in the order, judgment, notice
42 of judgment or lien. For the lien and privilege to arise and exist, the City Attorney or
43 the hearing officer shall record in the mortgage records of East Baton Rouge Parish a
44 certified copy of a final order imposing any fines, costs, penalties or other charge.
45 Any liens placed against such immovable property shall be included in the next

1 annual ad valorem tax bill and shall be paid along with such taxes, subject however,
2 to any valid homestead exemption.
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5 (b) The remedies provided for herein are nonexclusive and may be pursued
6 independently of each other and in addition to other remedies provided by law. In
7 addition to the lien or privilege, the recordation shall have the effect of a judicial
8 mortgage against the immovable property on which the violation occurred and may
9 be enforced against the immovable property upon application to the Nineteenth
10 Judicial District Court for issuance of a writ in accordance with Louisiana Code of
11 Civil Procedure article 2253.
12

13 **Sec. 12:715. Records**
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15 A copy of the notice of violation, the order or orders issued by the hearing officer,
16 and all documentary evidence introduced at the hearing shall be maintained by the City.
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18 **Section 2. Severability**
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20 If any provision of this Ordinance, or if the application of the provisions of this
21 Ordinance to a particular property is declared invalid by any court of competent jurisdiction, the
22 other provisions shall remain in full force and effect.
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24 Introduced this ____ day of November, 2009.
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26 Adopted this ____ day of December, 2009.
27

28 Signed this ____ day of December, 2009.
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32 _____
33 Shelton "Mac" Watts, Mayor
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36 Attest:
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40 _____
41 Mark Miley, City Clerk