

1 STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY
3 CITY OF MYRTLE BEACH
4

ORDINANCE 2008-71

5 AN ORDINANCE TO ENACT CHAPTER 14, ARTICLE X, SECTIONS
6 BEGINNING 14-200, ADMINISTRATIVE HEARING SYSTEM AND
7 INFRACTIONS
8

9 ARTICLE X ADMINISTRATIVE HEARING SYSTEM
10

11 **Sec. 14-200** CREATION AND PURPOSE, JURISDICTION.

- 12 a. There is hereby established an Administrative Hearings System which is
13 authorized to conduct administrative hearings on citations charging violations of
14 municipal ordinances of the City of Myrtle Beach, enacted pursuant to its police
15 powers and in furtherance of the City's promotion of the public's health, safety,
16 welfare, security, peace, order, convenience, prosperity and economy.
- 17 b. Matters subject to the administrative hearings system provided for by this Title
18 are charges of violation of any ordinance of the City of Myrtle Beach, in addition
19 to the matters specifically enumerated in this Article, so long as the charge is not
20 a "moving traffic violation," and the relief sought is not a penalty of incarceration
21 or a fine in excess of the amount established by Resolution of City Council,
22 excluding any allowable costs.
23

24 **Sec. 14-201** DIVISION OF ADMINISTRATIVE HEARINGS; ADMINISTRATOR,
25 POWERS AND DUTIES.

- 26 a. There is hereby established within the City Manager's Office a division of
27 administrative hearings, the function of which is to expedite the prosecution
28 and/or correction of code violations subject to the jurisdiction of the
29 administrative hearings system. The division is authorized to conduct and manage
30 administrative hearing proceedings in the manner provided for in this Title. The
31 division will consist of such persons as the City Manager appoints to assist with
32 the administrative hearing system provided for in this Title.
- 33 b. The City Manager shall oversee the Division. The responsibilities shall include:
34 1. Operating and managing the administrative hearing system;
35 2. Appointment or removal in sole discretion of administrative hearing
36 officers, as necessary;
37 3. Promulgating rules and regulations for the conduct of administrative
38 hearing proceedings.
39

40 **Sec. 14-202** ADMINISTRATIVE HEARING OFFICER.

- 41 a. Creation and Qualifications.
42 The position of Administrative Hearing Officer is hereby created. The Manager
43 shall appoint the Administrative Hearing Officer. The term of the Administrative
44 Hearing Officer shall be one (1) year. The Hearing Officer serves at will, and
45 cannot receive city employee benefits. The Manager shall determine the number
46 of Administrative Hearing Officers and compensation. The Administrative

47 Hearing Officer shall be an attorney admitted to the practice of law in the State of
48 South Carolina with at least three (3) years of active practice experience.

49 b. Powers.

50 The Administrative Hearing Officer shall have all powers necessary to conduct
51 fair and impartial hearings including, but not limited to, the power to:

- 52 1. Hold conferences for the settlement or simplification of the issues;
- 53 2. Administer oaths and affirmations;
- 54 3. Hear testimony;
- 55 4. Issue subpoenas;
- 56 5. Rule upon motions, objections, and the admissibility of evidence;
- 57 6. At the request of any party or on the Administrative Hearing Officer's
58 own motion, subpoena the attendance of relevant witnesses and the
59 production of relevant books, records, or other information;
- 60 7. Preserve and authenticate the record of the hearing and all exhibits and
61 evidence introduced at the hearing;
- 62 8. Regulate the course of the hearing in accordance with this Chapter, or
63 other applicable law;
- 64 9. Issue a final order, which includes findings of fact and conclusions of law;
- 65 10. Impose penalties and fines, not to exceed the amount established by
66 Resolution of City Council, issue orders that are consistent with applicable
67 code provisions; and assess costs upon finding a party liable for the
68 charged violation. In no event shall an Administrative Law Officer have
69 the authority to impose a penalty of imprisonment.

70

71 **Sec. 14-203** RULES AND REGULATIONS.

72 The Manager may institute such rules, regulations and procedures not inconsistent with
73 this Article. The rules and regulations promulgated for the conduct of administrative
74 adjudication hearings shall be published and kept on file in the office of the City Clerk
75 where they shall be available to the public for inspection and copying at nominal rates
76 during normal business hours. The rules and regulations shall also be made available
77 upon request without charge to any Respondent.

78

79 **Sec. 14-204** INSTITUTING ADMINISTRATIVE HEARINGS.

80 All Sworn Police Personnel, all Code Officers, all City Inspectors and Fire Prevention
81 Officers are hereby authorized to institute an administrative adjudication hearing by
82 issuing a violation notice specifying the date, time and place of the violation, the
83 ordinance or ordinances violated, the assessment levied, and the identification and
84 signature of the person issuing the violation notice, and the date and location of the
85 hearing.

86 A. Service of Violation Notice.

87 Service of a notice shall be affected either by affixing the original or a facsimile
88 of the notice to an unlawfully parked vehicle or by handing the notice to the
89 person if he or she is present. A violation notice issued, signed and served in
90 accordance with this Section, or a copy of the notice, shall be prima facie
91 evidence of the correctness of the facts shown on the notice. The notice or copy
92 shall be admissible in any subsequent administrative or legal proceedings without

93 foundation or authentication. Service of violation notices shall be in a matter
94 reasonably calculated to give them actual notice, and may include, as appropriate,
95 personal service of process upon a party or its employees or agents; service by
96 mail at a party's address; or service by posting notice on the property where the
97 violation is found. The signed violation notice, or a copy thereof if the original is
98 unavailable, shall be admissible without foundation or authentication in any
99 administrative or legal proceeding, and shall be prima facie evidence of the
100 correctness of the facts shown in the Violation Notice.

101
102 **Sec. 14-205 SUBPOENAS.**

- 103 A. Issuance. An Administrative Law Officer may issue a subpoena only if he or she
104 determines that the testimony of the witnesses or the documents or items sought
105 by the subpoena are necessary to present evidence that is relevant to the case and
106 relates to a contested issue in the case.
107
- 108 B. Content. A subpoena issued under this Chapter shall identify:
109 1. The person to whom it is directed;
110 2. The documents or other items sought by the subpoena, if any;
111 3. The date for the appearance of the witness and the production of the
112 documents or other items described in the subpoena;
113 4. The time for the appearance of the witness and the production of the
114 documents or other items described in the subpoena; and
115 5. The place for the appearance of the witness and the production of the
116 documents or other items described in the subpoena.
- 117 C. Appearance. In no event shall the date identified for the appearance of a witness
118 or the production of documents or other items be less than seven days after
119 service of the subpoena.
- 120 D. Contesting the Subpoena. Within three business days of being served with a
121 subpoena issued in accordance with this Chapter, the recipient of the subpoena
122 may contest the order authorizing the issuance of the subpoena to the
123 Administrative Hearing Officer, setting forth in detail the recipient's objections to
124 the subpoena. Upon receipt of the contest to the subpoena, the Administrative
125 Hearing Officer shall review the objections and, upon review, enter the
126 appropriate order.

127
128 **Sec. 14-206 REPRESENTATION AT HEARINGS.**

- 129 A. City Representation. The case for the City may be presented by the issuing
130 officer, or the City Attorney, Assistant City Attorney or an attorney designated by
131 the City Attorney.
- 132 B. Respondent Representation. The Respondent or an agent or attorney of the
133 Respondent may present the case for the Respondent. An agent or attorney shall
134 present a written authorization signed by the Respondent giving the agent or
135 attorney power to act and to bind the Respondent to any orders entered by the
136 Administrative Hearing Officer.

139 **Sec. 14-207 CONDUCT OF HEARINGS.**
140 The Administrative Hearing Officer shall conduct the hearings in an orderly manner and
141 insist upon proper decorum by all persons present at the hearings. The intent of the
142 hearings is to provide the City and the Respondent a full and fair presentation of the
143 issues.
144

145 **Sec. 14-208 TESTIMONY and EVIDENCE.**

- 146 A. Testimony. The Administrative Hearing Officer in making his/her determination
147 may admit hearsay testimony. The Administrative Hearing Officer shall
148 determine the weight, if any, to be given to the testimony.
149 B. Evidence. The technical rules of evidence shall not apply. Relevant documents
150 may be received into evidence without formal proof of authenticity. The
151 Administrative Law Officer shall determine the weight, if any, to be afforded
152 documents received into evidence.
153 C. Transcript of Proceedings. The Hearing shall be recorded. The City shall
154 determine the manner in which the transcript of proceedings shall occur. Either
155 party may request that the proceedings be taken and transcribed by a certified
156 court reporter. The cost of the court reporter shall be borne by the party requesting
157 the court reporter. The City may, at its cost, record the proceedings. If a recording
158 is made, a Respondent may obtain a transcript at Respondent's cost.
159 D. Continuances. All administrative law hearings shall be conducted on the date set
160 for hearing. For good cause shown, a continuance may be granted at the discretion
161 of the Administrative Hearing Officer; however, the City Council's purpose of
162 administrative hearings is to provide a prompt resolution of alleged code
163 violations, and accordingly, the request for and the grant of continuances shall be
164 granted only for good cause shown.
165

166 **Sec. 14-209 ORDERS.**

167 The Administrative Hearing Officer shall issue a written order specifying the ordinance
168 violated, and the fine and other relief granted. The order shall also contain the following
169 Notice:

170 The fines and penalties contained in this order are a debt due and owing the City
171 of Myrtle Beach and said total of fines and penalties must be paid within 30 days
172 of the date the order is issued by the Administrative Hearing Officer.
173 Failure to pay any fine or penalty due and owing the City within the
174 aforementioned time period may result in the City's instituting an action in the
175 Circuit Court of Horry County to recover said fines and penalties. In addition, the
176 City may pursue other debt collection actions.

- 177 A. Final Orders. The Order of the Administrative Hearing Officer becomes final 30
178 days following entry of the Order, or 30 days from a denial of a timely filed
179 petition to set aside the Hearing Officer's decision, whichever occurs last.
180 B. Petition to Set Aside Determination. A petition to set aside the Order of the
181 Administrative Hearing Officer must be filed within 30 days of entry of the
182 Administrative Hearing Officer's order. The petition shall be filed in the City
183 Clerk's office and notice shall be given to the City Attorney within 3 days of
184 filing. The Administrative Hearing Officer shall set a briefing schedule and

185 hearing date. The grounds for the petition are limited to the following: a) lack of
186 proper service, b) the person not having been the owner or lessee of the property
187 cited on the date the violation notice was issued, c) the Order is against the
188 manifest weight of the evidence, or that new evidence unknown to and
189 unavailable to a party on the date of the Hearing will materially affect the Order
190 of the Hearing Officer, or d) excusable failure to appear at the Hearing or request
191 a new date for a hearing. In the event the determination is set aside upon a
192 showing of just cause, the Administrator shall set a hearing on the merits for that
193 violation at the earliest available date convenient to all parties.

194 C. Violations of Orders. Any person, having received notice and an opportunity for
195 a hearing as provided in this Chapter who knowingly fails to comply with an
196 order issued by an Administrative Law Officer under this Chapter, including the
197 issuance of a subpoena, shall, if the order is not stayed by a court of competent
198 jurisdiction prior to its effective date, be guilty of a misdemeanor. Contempt shall
199 be punishable by a fine not to exceed \$500, or thirty (30) days imprisonment.
200 Each day that the misdemeanor violation continues shall be considered a separate
201 and distinct offense. In a prosecution under this section, it shall not be a defense
202 that a person came into compliance with an order, sought judicial review of it, or
203 made efforts to comply with an order, subsequent to its effective date.

204 D. Failure to Pay. The failure to pay the civil penalty within the time permitted
205 coupled with a failure to appear at the administrative hearing is declared a
206 misdemeanor punishable by up to five hundred dollars (\$500.00) in fines, and up
207 to thirty (30) days in jail, upon conviction.
208

209 **Sec. 14-210 ASSESSMENTS.**

210 All fines and other monies paid to the City in accordance with this Chapter shall be
211 remitted to the City and deposited in the appropriate City account as designated by the
212 Director of Finance and Administrative Services. If payment is not received on or before
213 the tenth (10th) day after the hearing date, then the City of Myrtle Beach, then the civil
214 penalty shall increase by \$100.00 for each thirty (30) day period during which it remains
215 unpaid.
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217 **Sec. 14-211 ADMINISTRATIVE HEARING PROGRAM PROCEDURES NOT**
218 **EXCLUSIVE.**

219 Notwithstanding any other provisions of this Chapter, the authority of the Code Hearing
220 Department to conduct administrative hearings in accordance with this Chapter shall not
221 preclude the City from seeking any remedies for code or ordinance violations through the
222 use of any other administrative procedure or court proceeding.

223 A. Other Provisions Not Limiting.

- 224 1) Notwithstanding any other provision of the Ordinances of the City or City
225 Code, all provisions of the code or ordinance may be enforced by
226 instituting an administrative adjudication hearing with the Code Hearing
227 Department as provided in this Chapter.
228 2) Nothing in this Chapter shall affect the jurisdiction of any City Board,
229 Commission or Board established by the Code of the City of Myrtle
230 Beach.

- 231 3) The city, in addition to or in lieu of assessing a civil penalty, may institute
232 a civil action in the circuit court in the county in which the infraction is
233 alleged to have occurred seeking (i) a mandatory injunction requiring
234 compliance with this division, (ii) a declaration that the infraction is a
235 public nuisance and an order requiring abatement of the public nuisance,
236 or (iii) for any other remedy permitted by law.
237 4) If three infractions occur within a six (6) month period, the city, in
238 addition to or in lieu of assessing a civil penalty or instituting a civil action
239 seeking (i) a mandatory injunction requiring compliance with this division,
240 (ii) a declaration that the infraction is a public nuisance and an order
241 requiring abatement of the public nuisance, or (iii) any other remedy
242 permitted by law, or may suspend or revoke the business license.
243 5) Each violation of this division shall be considered a separate and distinct
244 infraction, even if occurring within the same hour or the same day. In the
245 case of motor vehicles, three infractions by an individual within a six (6)
246 month period shall result in impoundment of any offending vehicle, and
247 the police hold on the vehicle barring release shall remain in effect until
248 the violator claims the vehicle with an approved safety helmet, or seeks
249 release with the apparent and present ability to remove the vehicle from
250 the city limits without operation in further violation of this ordinance.
251 6) If at the time the licensee seeks to renew the business license, the business
252 license shall not be renewed until any final unpaid civil penalties have
253 been paid in full.
254

255 **Sec. 14-212 APPEAL.**

256 Any party to an Administrative Hearing may appeal the Order of the Administrative
257 Hearing Officer to the Circuit Court of Horry County within 30 days of the entry of the
258 Order. In the event that a party files a timely petition to set aside a Hearing Officer's
259 ruling, a party may appeal the Order within 30 days of a decision on a petition to set aside
260 a Hearing Officer's Order. Such appeal shall be limited to a review of the official record
261 of proceedings of the Administrative Hearing. Only evidence found in the official record
262 of proceedings may be considered on appeal. The filing of an appeal in circuit court shall
263 not act as a stay of the city's right to seek (i) a mandatory injunction requiring compliance
264 with this division, (ii) a declaration that the infraction is a public nuisance and an order
265 requiring abatement of the public nuisance, or (iii) any other remedy permitted by law or
266 to suspend or revoke the business license.
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268 Section 14-113 –119 Reserved
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273 This ordinance shall take effect 90 days after adoption.
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JOHN RHODES
MAYOR

ATTEST:

JOAN GROVE, CITY CLERK

1st Reading: September 9, 2008

2nd Reading: