

ORDINANCE NO. 139 OF 2019

AN ORDINANCE TO ESTABLISH A NEW CHAPTER 38.5 PROCEDURES FOR ABATEMENT OF THE CITY OF SHREVEPORT, LOUISIANA, CODE OF ORDINANCES AND TO OTHERWISE PROVIDE WITH RESPECT THERETO.

**BY COUNCILMEMBERS: JERRY BOWMAN AND
JOHN NICKELSON**

WHEREAS, LA R.S. 13:2575 provides that any municipality may adopt an ordinance or ordinances establishing an administrative adjudication hearing procedure for those charges with owning blighted or abandoned property or violating a public health, housing, fire code, environmental, or historic district ordinance; and

WHEREAS, the City desires to establish an administrative adjudication hearing procedure (“Environmental Court”) in accordance with LA R.S. 13:2575 to become effective on January 1, 2020.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Shreveport, Louisiana in due, legal and regular session convened, that a new Chapter 38.5 be added to the City of Shreveport, Louisiana Code of Ordinances, to read as follows:

CHAPTER 38.5. – PROCEDURES FOR ABATEMENT

ARTICLE 1. - IN GENERAL

Sec. 38.5-1. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning.

Code violation means a violation of any provision of the City of Shreveport, Louisiana Code of Ordinances related to public health, housing, environmental, nuisance or vegetation ordinances or the City of Shreveport’s Comprehensive Building Code, as amended.

Order, judgment or notice of judgment means an administrative act of the hearing officer.

Unoccupied means having no legal occupant(s), vacant.

Violator means person(s), natural or juridical, who has been found liable and/or guilty of a Code violation and/or ordered to abate or correct a violation in an order issued under this article.

Sec. 38.5-2. - Authorization.

Any department of the city having a responsibility for the enforcement of Code violation(s) may enforce 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 article.

Sec. 38.5-3. - Appointment of hearing officer for City of Shreveport environmental court.

- (a) Administrative adjudication proceedings under this article shall be conducted before hearing officers who have been licensed to practice law in Louisiana for at least two (2) years.
- (b) Hearing officers shall be appointed by the mayor subject to approval of the city council, and shall serve at the pleasure of the mayor.
- (c) Hearing officers shall be sworn before the city attorney or his/her designee to uphold the Constitution, the laws and constitution of the State of Louisiana, and the Charter and ordinances of the City of Shreveport, and to abide by the provisions of the Louisiana Code of Governmental Ethics.

Sec. 38.5-4. - Authority of hearing officer.

Hearing officers who have been appointed and sworn in accordance with section 38.5-3 shall have the authority to hear and decide any and all Code violations.

Sec. 38.5-5. - Powers of a hearing officer.

The hearing officer shall have the power to:

- (a) Administer oaths and affirmations.
- (b) Issue orders compelling the attendance of witnesses, respondents, alleged violators, and violators and the production of documents.
- (c) Determine whether or not an alleged violator is liable or guilty of code violations.
- (d) Levy fees, costs, and penalties.
- (e) Order violators to correct violations within a stipulated time.
- (f) Take any and/or all necessary and lawful measures to effect corrections of the violation if the violator fails to do so within the time allocated by the hearing officer.
- (g) Record orders, judgments, notices of judgments, or liens in the mortgage office.

Sec. 38.5-6. - Procedure for hearing.

- (a) Whenever the city department having enforcement responsibility determines that a Code violation exists, a notice of violation(s) shall be provided to the owner and/or the mortgage holder and/or the occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.
- (b) A notice of violation(s) shall:
 - (1) Be in writing;
 - (2) Provide the municipal address of the cited property;
 - (3) Provide the date of the inspection;
 - (4) Provide notice of alleged Code violation(s) at the cited property;
 - (5) Provide the mailing address and telephone number of the enforcement department and/or agency;
 - (6) Provide the time, date and location of the administrative hearing whereby the alleged Code violation shall be adjudicated;
 - (7) Provide notice that the failure to appear at the hearing shall be considered an admission of liability for the charged violation(s);
 - (8) Provide the risk of fees, penalties, costs, and liens that may be imposed for continued violation(s); and
 - (9) Provide the risk of remedial measures that may be ordered by a hearing officer to correct or abate Code violation(s).
- (c) Prior to holding an administrative hearing pursuant to this article, the alleged violator shall be notified at least fifteen (15) days in advance of the date that such a hearing is scheduled. Notice shall be personally served or sent to the alleged violator by regular and certified or registered U.S. mail at the address listed in the assessor's office of the parish. The date of the postmark shall be deemed to be the date of delivery. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. Proof of notification and attempts at service shall be entered in the record for each case prior to the hearing.
- (d) Any person charged with Code violation(s) may present any relevant evidence and testimony at such hearing and may be represented. An alleged violator's physical presence shall not be required at the hearing if documentary evidence, duly verified by such person, is submitted to the hearing officer via the department of the city having a responsibility for the enforcement the Code violation(s), prior to the date of the hearing. Nothing contained herein shall be construed to limit the authority or the ability of a hearing officer to determine an alleged violator's liability or guilt based solely upon submitted documentary evidence.
- (e) Any order compelling the attendance of witnesses or the production of documents may be enforced by the municipal court or by any other court of competent jurisdiction.
- (f) Any administrative adjudication hearing held under the provisions of this article shall be conducted in accordance with the rules of evidence of the Administrative Procedure Act, R.S. 49:950 et seq. Testimony of any person shall be taken under oath and shall be recorded.
- (g) The hearing officer shall issue a final order, judgment, or notice of judgment within thirty (30) days of the hearing, excluding legal holidays. A copy of the final order, judgment, or

notice of judgment may be personally served on the day of the hearing or shall be sent to the violator by regular and certified or registered U.S. mail within fourteen (14) days of issuance. The order, judgment, or notice of judgment shall:

- (1) Be signed by the hearing officer;
 - (2) State whether or not the alleged violator is liable or guilty of each violation and any specific determinations thereto;
 - (3) Provide the amount of fees, costs, and penalties assessed for each violation;
 - (4) Provide the defects to be corrected and the extent by which each violation shall be corrected, repaired, and/or abated;
 - (5) Provide the reasonable period of time by which each violation shall be corrected, repaired and/or abated;
 - (6) Notify the violator(s)' of their right to appeal; and
 - (7) Notify the violator that the city may act to abate violation(s) if the violator fails to act in accordance with the order, judgment, or notice of judgment, where applicable.
- (h) The city may enforce any order assessing fees, costs, and penalties, and/or stipulating a required correction, repair, or abatement measure.

38.5-7. - Penalties.

- (a) The penalty for each violation shall not exceed the maximum that may be imposed by municipal court as provided in R.S. 13:2575 et seq., or the fine imposed by ordinance of the city council.
- (b) Each day that violation(s) continue after due notice has been served shall be deemed a separate offense at a rate set by the city council.
- (c) A schedule of penalties may be established by ordinance providing penalty amounts, consistent with subpart (a), for specific Code violation(s).
- (d) Environmental court fines.

<u>Type of Violation</u>	<u>Amount of Fine</u>
1st Offense—High grass & weeds	\$150.00
2nd Offense—High grass & weeds	300.00
1st Offense—Inoperable vehicle	75.00
2nd Offense—Inoperable vehicle	300.00
1st Offense—Littering/illegal dumping/discarded items	75.00
2nd Offense—Littering/illegal dumping/discarded items	300.00
1st Offense—Derelict/unsecure structure	75.00
2nd Offense—Derelict/unsecure structure	300.00

All other first offense nuisance violations not listed above shall be set at seventy-five dollars (\$75.00) per violation or less.

All other second offense nuisance violations not listed above shall be set at three hundred dollars (\$300.00) per violation or less.

Any subsequent violation following a second offense violation shall be set at four hundred fifty dollars (\$500.00) or less.

Daily fines shall not exceed seventy-five dollars (\$75.00) per day per violation for residential properties and three hundred fifty dollars (\$300.00) per day per violation for commercial properties. Fines for residential properties shall not exceed five thousand dollars (\$5,000.00).

Upon proof of age, all senior citizens, sixty-five (65) and older, shall be given an additional thirty (30) days prior to enforcement under section 38.5-8 (b).

Sec. 38.5-8. - Costs.

- (a) Costs and expenses that may be recovered and enforced against a violator under this article include:
- (1) The city's direct cost for abatement;
 - (2) Costs of the investigation, enforcement, and/or remediation or abatement of a violation;
 - (3) City costs for equipment use or rental if required for abatement;
 - (4) Attorney's fees if attorney other than city attorney or assistant city attorney provides services;
 - (5) Hearing and/or court costs including but not limited to hearing officer and witness fees. In the event the city attorney or assistant city attorneys cannot serve as the hearing officer the rate of pay for such hearing officer shall be set by the city council.
 - (6) Costs of technical services and studies as may be required for abatement;
 - (7) Costs of monitoring programs necessary for correcting, monitoring, abating or mitigating violations;
 - (8) Any expense reasonably and rationally related to the city's enforcement action(s) to bring violation(s) into compliance or to abate and/or correct a violation of local, state or federal law.
- (b) If payment is not received within thirty (30) days of personal service the mailing of the notice or statement of costs, or following any appeal hearing upholding all or part of the costs, the city may issue a demand of payment. A demand of payment shall be mailed to a violator and provide notice that, if payment is not received by the date indicated in the demand, the city may lien the property that was subject to the enforcement/abatement action for all applicable costs.

Sec. 38.5-9. - Appeal.

Any person determined by the hearing officer to be guilty of a Code violation may appeal the determination to the civil district court for the parish. Such appeal shall be instituted by filing, within thirty (30) calendar days of the mailing of the hearing officer's order, a petition with the clerk of the civil district court along with payment of such costs as may be required by the clerk of court. After filing a petition for appeal, the clerk of court shall schedule a hearing and notify all parties of the date, time, and place of such hearing. Service of notice of appeal under this subsection shall not stay the enforcement and collection of the judgment unless the person who files the appeal furnishes security prior to filing notice of appeal with the department of finance in the amount fixed by the hearing officer sufficient to assure satisfaction of the finding of the hearing officer relative to the fine(s), fee(s), penalty/penalties, cost(s) of the hearing, and cost(s), if any, of correcting the violation(s).

Sec. 38.5-10. - Liens.

- (a) After the time and procedures have run for a final appeal the city shall have a lien and privilege against the immovable property in, on, or upon which violation(s) occurred. The lien and privilege shall secure all fines, fees, costs, and penalties that are assessed by the city and described in the order, judgment, or notice of judgment and the notice or statement of costs. The recordation of the order, judgment, or notice of judgment in the mortgage office of the parish shall constitute a lien and privilege against the land upon which violation(s) exists. Any lien and privilege recorded against an immovable property under this article shall be included in the next annual ad valorem tax bill.
- (b) The city, upon recordation of the order, judgment, notice of judgment, or lien and upon notice to the city council, may:
 - (1) Apply to the clerk of district court for issuance of a writ in accordance with Code of Civil Procedure Article 2253, under the authority of R.S. 13:2575 and 13:2576, upon describing with particularity the immovable property and the manner in which the writ is to be enforced; or
 - (2) Institute a suit against the owner of record in any court of competent jurisdiction to enforce the order, judgment, notice of judgment, or lien.
- (c) In order for the lien and privilege to arise, the order, judgment, notice of judgment or lien shall be final and not subject to appeal when recorded in the mortgage office and all appeal delays have elapsed.
- (d) Any monies collected pursuant to this chapter shall first satisfy all outstanding municipal liens recorded against an immovable property and only when all outstanding municipal liens are satisfied in full shall monies be applied towards an immovable property's ad valorem taxes.

Sec. 38.5-11. - Remedies not exclusive.

The regulations, procedures, and remedies established by this Chapter are nonexclusive and may be pursued independently of each other and in addition to other remedies provided by law.

Sec. 38.5-12. - Recordkeeping.

- (a) At its commencement by notice of violation, every adjudication proceeding shall be assigned a docket number and a style in the form of "City of Shreveport 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 department and/or agency charged with the enforcement of an ordinance within the scope of this article shall, with the advice of the city attorney's office, maintain a log or index of all 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) Alleged Code violation(s);
 - (3) Date of the alleged violation(s);
 - (4) Address or other description of the property upon which the alleged violation(s) exist or have occurred;
 - (5) Date(s) 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) Statement(s) 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) Statement(s) as to the date of filing and disposition of any appeal.

Sec. Sec. 38.5-13. - Transfer of ownership.

It is a violation for any property owner(s) to transfer a property that receives a notice of violation without notifying the enforcement department of the city that sent said notice of violation. Anyone found in violation of this section shall be fined five hundred dollars (\$500.00).

BE IT FURTHER ORDAINED that if any provision or item of this Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Ordinance which can be given affect without the invalid provisions, items or applications and to this end the provisions of this Ordinance are hereby declared severable.

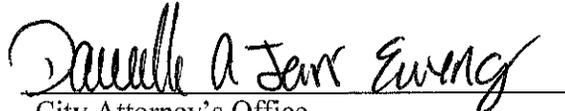
BE IT FURTHER ORDAINED that all fines, penalties, and costs assessed by the City of Shreveport Administrative Hearing Officer shall be payable to the City of Shreveport. The City of Shreveport shall use such funds to offset the costs of enforcement of the City of Shreveport public health, housing, property standards, and environmental ordinances, including costs associated with the administrative adjudication procedure established in this Ordinance.

BE IT FURTHER ORDAINED that all Ordinances or parts thereof in conflict herewith are hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance shall become effective on January 1, 2020.

THUS DONE AND ORDAINED by the City Council of the City of Shreveport, Louisiana.

APPROVED AS TO LEGAL FORM:


City Attorney's Office

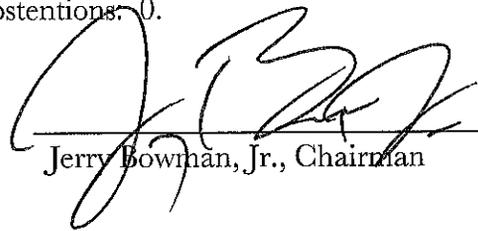
ORDINANCE NO. 139 OF 2019

October 8, 2019

Read by title and as read motion by Councilman Bradford seconded by Councilman Green for Introduction.

October 22, 2019

Having passed first reading on October 8, 2019 was read by title and on motion ordered passed to third reading. Read by title and as read motion by Councilman Bowman seconded by Councilman Nickelson for adoption. Approved by the following vote: Ayes: Councilmen Willie Bradford, John Nickelson, Grayson Boucher, James Flurry, and Jerry Bowman, Jr. 5. Nays: 0. Absent: Councilmembers LeVette Fuller and James Green. 2. Out of the Chamber: 0. Abstentions: 0.



Jerry Bowman, Jr., Chairman

Approved:



Adrian Perkins, Mayor

Approved by the City Council OCT 22 2019

Approved by the Mayor OCT 25 2019

And Effective on NOV 02 2019

at 12:01 O'clock A.M."



Arthur G. Thompson, Clerk of Council

FACT SHEET**CITY OF SHREVEPORT, LOUISIANA****TITLE**

An ordinance to establish a new Chapter 38.5 Procedures for Abatement of the City of Shreveport, Louisiana, Code of Ordinances and to otherwise provide with respect thereto.

DATE

October 8, 2019

ORIGINATING DEPARTMENT**COUNCIL DISTRICT**

City-wide

SPONSORS

Councilman Jerry Bowman and
Councilman John Nickelson

PURPOSE

This ordinance establishes a new Chapter in the City of Shreveport, Louisiana Code of Ordinances to establish an administrative adjudication hearing procedure (“Environmental Court”) for those charged with owning blighted or abandoned property or violating a public health, housing, or environmental ordinance.

BACKGROUND INFORMATION

The City of Shreveport in an effort to clean up the City has been performing clean sweeps throughout the City in an effort to educate citizens and address property standards violation, problems, and concerns.

Establishing an administrative adjudication hearing procedure (“Environmental Court”) for those charged with owning blighted or abandoned property or violating a public health, housing, or environmental ordinances, will allow the City to expeditiously handle violations and encourage compliance from property owners. The establishment of this Environmental Court will aid in the clean-up the blight and nuisance violations throughout the City.

TIMETABLE

Introduction: October 8, 2019
Final Passage: October 22, 2019

ATTACHMENTS

None

SPECIAL PROCEDURAL REQUIREMENTS

NA

FINANCES

NA

SOURCE OF FUNDS

Expected to be self-sufficient.

ALTERNATIVES

(1) Adopt the ordinance as submitted, or (2) Amend the ordinance, or (3) Reject the ordinance.

RECOMMENDATION

The Sponsors of this legislation recommend that the City Council adopt the ordinance.

FACT SHEET PREPARED BY:

Danielle A. Farr Ewing,
Assistant City Attorney