

ORDINANCE NO. 05-01
GILA COUNTY HEARING OFFICER



RULES OF PROCEDURE

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GILA COUNTY HEARING OFFICER RULES OF PROCEDURE

RULE 1

SCOPE

- 1.1 These rules shall apply in all cases involving the adjudication of civil violations which may be brought before the Gila County Hearing Officer (Hearing Officer) pursuant to A.R.S. 11-808 (E); Gila County Zoning Ordinance, Section 107.2.B
- 1.2 An alleged violator charged under the above statutes, codes or ordinances with a civil violation shall not be subject to a criminal charge arising out of the same facts.
- 1.3 An action before the Hearing Officer does not preclude the Board of Supervisors, County Attorney, Officer, private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate the violation.
- 1.4 Notices of violation and civil violations under any referenced ordinance shall follow the non ticket format.
- 1.5 Any code or ordinance later added to the Hearing Officer's jurisdiction will follow procedural rules under the nonticket complaint format according to the specific authority in that particular code, ordinance or statute.

RULE 2

DEFINITIONS

- 2.1 **CLERK** means the Clerk of the Gila County Hearing Officer.
- 2.2 **COMPLAINT** means a formal notification of a civil violation of any referenced ordinance filed with the Hearing Officer.
- 2.3 **COUNSEL** means an attorney licensed to practice law in the State of Arizona.
- 2.4 **COUNTY** means Gila County or any of its agencies or departments.

- 2.5 **COUNTY BOARD** means the Gila County Board of Supervisors.
- 2.6 **DEFENDANT** means the alleged violator.
- 2.7 **DESIGNATED REPRESENTATIVE** means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the Hearing Officer. The written authorization shall state the name of the person authorized to act on defendant's behalf; that the defendant understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Officer; and shall be signed by the defendant before a notary public.
- 2.8 **HEARING OFFICER** means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced ordinances.
- 2.9 **OFFICER** means a county zoning inspector/code compliance officer, deputies or assistants.
- 2.10 **PARTY** means the defendant or the County.

RULE 2A SERVICE

- 2A.1 Alternative Methods. Where personal service cannot be accomplished, service may be made in the manner prescribed for alternative methods of service in 16 A.R.S. Rules of Civil Procedure, Rule 4.
- 2A.2 Personal Service, Personally Serve, Personally Served shall include delivery of pleadings or other papers to the alleged violator personally or by leaving such pleadings or papers at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or delivery to a personal representative or agent authorized by appointment or by law to receive service of process.

RULE 3 COMMENCEMENT OF ACTION

Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint by an officer authorized to file such complaints.

- 3.1 Complaints shall contain name and address of alleged violator, legal description and/or address of site of violation, a statement of facts constituting the specific violation, and the ordinance or regulation designation of the violation.

RULE 4 NOTICE OF HEARING

- 4.1 Complaints. After filing of complaint by the Inspector or Officer with the Hearing Officer, a date for appearance and plea shall be set and notice of said date shall be personally served on the alleged violator at least ten (10) days prior to the appearance date. If the officer is unable to personally serve the notice, then the notice may be served by alternative methods of service prescribed in 16 A.R.S. Rules of Civil Procedure, Rule 4. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days prior to the date for appearance and plea.

RULE 5 APPEARANCE AND ENTRY OF PLEA

- 5.1 Complaints. The defendant may admit or deny Responsibility by appearing in person at the time and date set to appear and enter plea or by mailing to the Hearing Officer a completed, signed and dated Notice to Appear and entry of Plea form provided with the complaint or in lieu of such form, a short statement signed by the defendant or his attorney admitting or denying the allegations of the complaint, which must be received in the office of the Hearing Officer by 5:00 p.m. on the business day prior to the date set for appearance and plea.
 - 5.1.1 Upon admission of responsibility, and if there is no agreement in writing between the parties to waive the hearing for determination of penalty and date for remediation of the violation, the Hearing Officer shall set a time and place for determination of the civil penalty and remediation date, the defendant and the Officer shall be given an opportunity to state their position on the amount of the penalty to be imposed by the Hearing Officer.
 - 5.1.2 Hearing for determination of penalty and remediation date may be waived if agreed to by the parties in writing. Upon

agreement to waive said hearing, the Hearing Officer shall impose the minimum penalty according to the applicable statute, ordinance, code or resolution, setting forth penalties for the subject violation and set a date for remediation of the violation. Defendant and Officer shall be notified by first class mail of the penalty and remediation date.

5.1.3 Upon denial of responsibility, the Hearing Officer shall set the matter for hearing testimony and evidence, and notify the defendant and county officer of the date, time and place for said hearing.

5.1.4 Failure of the defendant to enter a plea at the date and time set in the Notice to Appear and Entry of Plea or by mail by 5:00 p.m. on the previous day shall be considered a default as set forth in Rule 10 of these rules.

RULE 6 AMENDING THE COMPLAINT

6.1 The Hearing Officer may permit a complaint to be amended at any time before the final decision if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.

6.2 The complaint may be amended to conform to the evidence adduced at the hearing if no additional or different violation is charged thereby and if substantial rights are not thereby prejudiced.

6.3 All amendments to a complaint relate back to the date that the complaint was issued.

RULE 7 VOLUNTARY DISMISSAL

The County may request in writing that the Hearing Officer dismiss a complaint. All such requests shall be filed prior to the hearing for testimony and presentation of evidence.

RULE 8 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE

8.1 If a defendant denies the allegations contained in the complaint and a hearing for testimony and presentation of evidence is set, the Hearing Officer shall promptly provide the defendant written notice that his right to be represented by counsel or by other designated representative is waived

unless he notifies the Hearing Officer, in writing at least ten (10) days prior to the hearing date for testimony and presentation of evidence of defendant's election to be represented by counsel or by other designated representative.

- 8.2 Absent extraordinary circumstances, failure of the defendant to notify the Hearing Officer of an election to be represented by counsel or designated representative at least ten (10) days prior to the hearing for testimony and presentation of evidence constitutes a waiver of the right of counsel or designated representative.

RULE 9 REPRESENTATION OF THE COUNTY

Absent extraordinary circumstance, or notice that the defendant will be represented by counsel the County will not be represented by counsel.

RULE 10 DEFAULT

- 10.1 If the defendant fails to admit or deny responsibility by mail, fails to appear and enter a plea, or fails to appear at the hearing for testimony and presentation of evidence the allegations of the complaint shall be deemed admitted, and the Hearing Officer shall enter a default judgment against the defendant and impose a civil penalty as provided by the applicable ordinance, or resolution setting forth penalties. The Officer may present evidence for determination of the penalty amount prior to the imposition of penalty. The parties shall be notified of said default judgment by first class mail.
- 10.2 If it appears from the face of the complaint that the defendant is in the active military service, no default judgment may be entered against the defendant. In such case, the Hearing Officer may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

RULE 11 SETTING ASIDE DEFAULT

- 11.1 A motion to set aside the default judgment entered under Rule 10 shall be made in writing no later than thirty (30) days after entry of default judgment.

- 11.2 The Hearing Officer's decision on a request to set aside default judgment is final and is not appealable to the County Board.

RULE 12 DEFAULT BY COUNTY

If no witnesses for the County excluding the defendant appears at the time set for hearing, the Hearing Officer shall dismiss the complaint unless good cause is shown for continuing the hearing to another date.

RULE 13 CONTINUANCE

- 13.1 The Hearing Officer may, upon motion of any party or on his own motion, continue the hearing for a period not exceeding thirty (30) days from the pending hearing if it appears that the interests of justice require continuation.
- 13.2 The Hearing Officer shall notify both parties in writing of the new hearing date.

RULE 14 DISCOVERY

- 14.1 No pre-hearing discovery shall be permitted absent extraordinary circumstances.
- 14.2 Immediately prior to the hearing, both parties shall present to the Clerk of the Hearing Officer and produce for inspection by the opposing party any prepared exhibits and written or recorded statements of any witness which may be offered at the hearing. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess or continuance to permit such inspection. Any continuance granted under this rule shall not exceed fourteen (14) days.

RULE 15 SUBPOENAS

- 15.1 Either party may request the Clerk to issue subpoenas for the attendance of witnesses and/or production of documents pursuant to A.R.S. 12-2212. The subpoena shall state the title of the action and command each person to whom it is directed to give testimony at the place and time listed on the subpoena.
- 15.2 A subpoena may be served by the Sheriff, his deputies, or by any other person who is not a party and is not less than

eighteen (18) years of age. At the time of service, witness fees for one day plus mileage shall be paid to the witness pursuant to A.R.S. 12-303 which shall be paid by the requesting party.

RULE 16 QUESTIONING OF WITNESSES

- 16.1 All testimony shall be given under oath or affirmation.
- 16.2 The Hearing Officer may on his own motion call and examine witnesses, including the defendant.
- 16.3 No person may be examined at a hearing except by the following:
 - 16.3.1 Hearing Officer.
 - 16.3.2 Either the defendant or defendant's attorney or designated representative.
 - 16.3.3 Either the Officer or Officer's counsel.

RULE 17 ORDER OF PROCEEDINGS

- 17.1 All witnesses called to testify on behalf of the County, other than the defendant or rebuttal witnesses, shall be required to testify prior to the defendant being required to testify. A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.
- 17.2 The order of proceedings shall be as follows:
 - 17.2.1 Testimony of the Officer and any other County witnesses.
 - 17.2.2 Testimony of defendant and any other defense witnesses.
 - 17.2.3 Testimony of County's rebuttal witnesses, if any.
 - 17.2.4 Testimony of defendant's rebuttal witnesses, if any.
 - 17.2.5 Argument of the parties or their counsel or designated representative if permitted by the Hearing Officer.

17.2.6 Ruling by the Hearing Officer.

RULE 18 RULES OF EVIDENCE

- 18.1 The Arizona Rules of Evidence shall not apply before the Hearing Officer. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant and material and has some probative value to a fact at issue.
- 18.2 Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communication.
- 18.3 Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.
- 18.4 Documentary evidence may be received in the form of copies or by incorporation by reference.
- 18.5 The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.

RULE 19 RECORD

A record of the proceedings shall be made by audiotape. The defendant may have the proceedings recorded by a court reporter provided by the defendant at the defendant's expense.

RULE 20 RULING OF THE HEARING OFFICER

- 20.1 If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable ordinance, or resolution.
- 20.2 The ruling shall include the findings and conclusion of the Hearing Officer.
- 20.3 The Hearing Officer shall deliver or mail to all parties a copy of the decision together with written notice of right to appeal within ten (10) calendar days from the date the decision is signed by the Hearing Officer.

RULE 21 NOTICE OF RIGHT TO APPEAL

Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of Defendant's right to a review of the Hearing Officer's final decision. Defendant also shall be informed of the applicable time limit and referred to the rules governing the review process.

RULE 22 APPELLATE REVIEW

The procedure for review of a civil violation of any referenced ordinance is as follows:

- 22.1 The party requesting review shall file a written notice of request for appellate review with the Clerk of the Hearing Officer within ten (10) days after the signing of the final decision by the Hearing Officer.
- 22.2 The request for appellate review shall identify the decision on appeal. The request shall be signed by the appellant, his attorney, or his designated representative and shall contain the names, addresses and telephone numbers of all parties and their attorney or designated representative. The request for appellate review shall state whether appellant will represent himself or the name of appellant's attorney or designated representative. Failure to designate representation by counsel or designated representative at the time of request for appeal constitutes a waiver of the right of counsel or designated representative.
- 22.3 The original, plus one copy of the notice of request for appellate review shall be filed with the Clerk who shall serve a copy of the request for appellate review on the other party or the other party's attorney or designated representative.
- 22.4 Record on Appeal. The Board's review of the Hearing Officer's decision shall be limited to the record of proceedings before the Hearing Officer, and there shall be no introduction of new evidence. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, all evidence admitted at the hearing, and the audiotape required by Rule 19. If the Board determines that a transcript of the audiotape is necessary, a transcript shall be prepared by the Clerk of the Hearing Officer at the requesting party's expense. A trial de novo (new trial) is not permitted.

22.5 Transmission of Record

22.5.1.1 Upon receipt of the request for appellate review, the Hearing Officer's Clerk shall within twenty (20) working days, prepare and transmit the record to the Clerk of the Board of Supervisors.

22.5.1.2 The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Hearing Officer within ten (10) days after filing of the Notice of Request for Appellate Review.

22.5.1.3 Upon transmission of the record, the Clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within ten (10) working days from the date of transmission of the record by the Hearing Officer's clerk.

22.6 Appellate Memoranda. Each party may file a written memorandum no later than ten (10) working days following the date of transmission of the record to the Board as to why the Board should affirm, modify or reverse the final decision being reviewed by the Board. The memorandum shall not raise new facts or issues not before the Hearing Officer.

22.6.1 Each party shall file the original plus three copies with the Clerk of the Board.

22.6.2 No memorandum filed shall exceed five typewritten double-spaced pages in length.

22.7 Notice of Appellate Review by the Board. Upon receipt of the record by the Board from the Hearing Officer, the Clerk of the Board shall set a date for the review and mail the parties a written notice of the time and place of the appellate review. Appellate review by the Board shall be set within no less than twenty (20) days from Board's receipt of transmission of record. The notice of the

appellate review date shall be mailed by first class mail not less than five (5) days prior to the appellate review hearing. Appeal hearing may be continued by the Board for good cause.

22.8 Oral Argument. Oral argument shall be limited to five (5) minutes to each party, unless extended by the Board. One person shall speak for each side unless this requirement is waived by the Board. Oral argument shall be based on the record and there shall be no presentation of new evidence in oral argument. Either party may waive its oral argument.

22.9 Disposition by the Board. After consideration of the record transmitted by the Hearing Officer and memoranda, the Board may increase, decrease or modify any penalty imposed by the Hearing Officer as long as it follows the penalty amounts set by the applicable ordinance or resolution and may:

22.9.1 Affirm the decision of the Hearing Officer;

22.9.2 Affirm in part and reverse in part and, in necessary remand for further proceedings; or

22.9.3 Reverse the action of the Hearing Officer and, if necessary remand for further proceedings.

22.9.4 Written notice of the final decision of the Board shall be hand delivered or mailed by first class mail to all parties by the Clerk of the Board within ten (10) calendar days of the Board's decision.

22.10 Appeal to the Superior Court. Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (12-901 et seq.)

RULE 23 ORDER TO SHOW CAUSE

If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.

- 23.1 All orders to Show Cause issued by the Hearing Officer shall set forth the time and place for hearing and be personally served upon the defendant. Where personal service cannot be accomplished, service may be made in the manner prescribed for alternative methods of service in 16 A.R.S. Rules of Civil Procedure, Rule 4.
- 23.2 At any hearing on an Order to Show Cause, the only issue before the Hearing Officer is compliance with the decision entered previously by the Hearing Officer. The Hearing Officer shall find either the defendant has complied or not complied with the previously entered decision. If good cause cannot be shown for noncompliance, the Hearing Officer shall order the imposition of additional penalties upon the defendant.
- 23.3 Failure by defendant to appear shall not constitute grounds for continuance. Hearing shall proceed in the absence of the defendant. Plaintiff shall present evidence and the Hearing Officer shall make a determination.

Passed and Adopted this 6th day of December, 2005.

Gila County Board of Supervisors

By: _____
 Jose M. Sanchez, Chairman

Approved as to form:

ATTEST:

 County Attorney

 Steven L. Besich, Clerk of the Board