ORDINANCE NO. 05-01
GILA COUNTY HEARING OFFICER

RULES OF PROCEDURE

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Amendment approved: November 17, 2008

GILA COUNTY HEARING OFFICER RULES OF PROCEDURE

The Rules of Procedure for the Gila County Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S. 48-3601 through 3628 (Unauthorized Development within the Floodplain); A.R.S. 49-141 (Unhealthy Conditions Causing Environmental Nuisance); A.R.S. §11-268 (Requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris and dilapidated buildings which constitute a hazard to Public Health and Safety from buildings grounds, lots, contiguous sidewalks, streets and alleys); A.R.S. 11-808 (Establish Civil Penalties for Zoning Violations) and A.R.S. 11-866 which allows A.R.S. 11-808 (to be utilized in enforcing Building Codes).

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. The Rules of Procedure for the Gila County Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S. 48-3601 through 3628 (Unauthorized Development within the Floodplain); A.R.S. 49-141 (Unhealthy Conditions Causing Environmental Nuisance); A.R.S. §11-268 (Requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris and dilapidated buildings which constitute a hazard to Public Health and Safety from buildings grounds, lots, contiguous sidewalks, streets and alleys); A.R.S. 11-808 (Establish Civil Penalties for Zoning Violations) and A.R.S. 11-866 which allows A.R.S. 11-808 (to be utilized in enforcing Building Codes).

1.2 An alleged violator charged under the above Development Codes 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, County 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 complaint format.

1.5 Any code or ordinance later added to the Hearing Officer's jurisdiction will follow procedural rules under the non-ticket complaint format according to the specific authority in that particular code, ordinance or statute.

1.6 The Hearing Officer has the authority to impose penalties for violations and to order compliance with the Gila County Development Codes.

TABLE OF CONTENTS

RULE 1	SCOPE	1
RULE 2	DEFINITIONS	2
RULE 3	SERVICE	3
RULE 4	COMMENCEMENT OF ACTION	4
RULE 5	NOTICE OF HEARING	4
	Complaints	4
RULE 6	APPEARANCE AND ENTRY OF PLEA	5
	Complaints	5
RULE 7	AMENDING THE COMPLAINT	5
RULE 8	VOLUNTARY DISMISSAL	6
RULE 9	NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVES	6
RULE 10	REPRESENTATION OF THE COUNTY	6
RULE 11	DEFAULT	6
RULE 12	SETTING ASIDE DEFAULT	6
RULE 13	DEFAULT BY COUNTY	7
RULE 14	CONTINUANCE	7
RULE 15	DISCOVERY	7
RULE 16	SUBPOENAS	7
RULE 17	QUESTIONING OF WITNESSES	7
RULE 18	ORDER OF PROCEEDINGS	8
RULE 19	RULES OF EVIDENCE	8
RULE 20	RECORD	9

RULE 21	RULING OF THE HEARING OFFICER.....	9
RULE 22	NOTICE OF RIGHT TO APPEAL.....	10
RULE 23	APPELLATE REVIEW.....	10
	Record on Appeal.....	10
	Transmission of Record.....	11
	Appellate Memoranda.....	11
	Oral Argument.....	11
	Appeal to the Superior Court.....	12
RULE 24	ORDER TO SHOW CAUSE.....	12

RULE 2 DEFINITIONS

2.1 ALLEGED VIOLATOR means the property owner(s), tenant or any other entities that are responsible for adhering to the Gila County Development Codes.

2.2 BOARD OF DIRECTORS means the Board of the Gila County Flood Control District.

2.3 COMPLAINT means a formal notification of a civil violation of any referenced ordinance filed with the Hearing Officer.

2.4 COUNSEL means an attorney licensed to practice law in the State of Arizona.

2.5 COUNTY means Gila County or any of its agencies or departments.

2.6 COUNTY BOARD means the Gila County Board of Supervisors.

2.7 DEFENDANT means the alleged violator of the Gila County Development Codes.

2.8 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 the 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.

2.9 DEVELOPMENT CODES means the Codes and Ordinances necessary to and utilized in Land Use Development in Gila County. The Development Codes includes the following statutes, codes, and ordinances as enumerated.

(1) The Gila County Floodplain Management Ordinance, and subsequent revisions; A.R.S. 48-3601 through 3628, and subsequent revisions; 44 CFR Parts 59 and 60 and subsequent revisions.

(2) Wastewater Codes:

a.) Aquifer Protection Permit Program, Title 18 Environmental Quality, Arizona Administrative Codes Chapter 9, Articles 1 & 3 (Parts A and E), Article 7 (701), (708.A) and (711) as specified in Appendix A of the Gila County Delegation Agreement #06-0020 with ADEQ.

b.) A.R.S. 49-141(A)(3), (4), and (5) Unhealthy Conditions Causing Environmental Nuisance as specified in Appendix B of the Gila County Delegation Agreement #06-0020 with ADEQ.

c.) Gila County Wastewater Ordinance # 01-2.

(3) Gila County, Arizona Planning & Zoning Code Ordinance

(4) The Gila County Outdoor Light Control Ordinance

(5) Minor Land Division Ordinance of the County of Gila

(6) Subdivision Regulations Gila County, Arizona

(7) The Building Code Ordinance of the County of Gila, including all adopted amendments and revisions

(8) The Gila County Clean and Lien Ordinance

2.10 HEARING OFFICER means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Development Codes.

2.11 COUNTY OFFICER means a County Zoning Inspector, Code Enforcement Officer, Gila County Community Development Director or the Building Official.

2.12 PARTY means the defendant or the County.

2.13 SUMMONS is a legal notice requiring an individual to appear at a designated place, time and date.

2.14 CODE COMPLIANCE SUPERVISOR means the Code Compliance Supervisor or his/her designee.

RULE 3 SERVICE

3.1 Personal Service, Personally Serve, Personally Served
This shall be accomplished by the County Officer, Inspector or other authorized law enforcement officers delivering documents to the alleged violator personally or by leaving such pleadings or papers at his/her 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. Any document served upon the alleged violator(s) by personal service shall be served at least fifteen (15) days prior to the hearing date.

3.2 Service by Certified Mail as an Alternate Means of Service. Where personal service cannot be accomplished or is impractical, the County Officer has the administrative authority to accomplish service by mailing the complaint by Certified Mail to the mailing address associated with the parcel as currently on file with the Gila County Assessor's Office. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days

prior to the hearing date. Service is completed when an acknowledgement of receipt by the County Officer and placed in the file. At hearing, the County Officer attempting service by Certified Mail shall provide the reasons why personal service cannot be accomplished or is impractical. If the Hearing Officer disagrees, the Hearing Officer may require personal service of the complaint.

3.3 Service by Publication. When service by publication of a legal notice is the best means practical under the circumstances for providing notice of the institution of the action against the property, then service may be made by publication upon approval of the Code Compliance Supervisor.

3.4 Additional Alternative Methods. If service by one of the methods above proves impractical, then service may be done by any method as the Hearing Officer upon motion and without prior notice, may direct. Whenever the Hearing Officer allows any other method of service pursuant to this section, the party requesting a different method of service shall make reasonable efforts to ensure that the other party actually does receive notice of legal action against them or the property. Additionally, the complaint, and any documents to be served, as well as any order of the Hearing Officer authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served.

RULE 4 COMMENCEMENT OF ACTION

4.1 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 with the Code Compliance Supervisor by an officer authorized to file such complaints.

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

RULE 5 NOTICE OF HEARING

5.1 Notice of Hearing. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least fifteen (15) days prior to this appearance date. If the County Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified Mail in accordance with Rule 3.2 of the Hearing Officer Rules of Procedure. 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.

RULE 6 APPEARANCE AND ENTRY OF PLEA

6.1 **Complaints. The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Compliance Supervisor a completed, signed and dated Notice to Appear and Entry of Plea form provided with the complaint. In lieu of such form, a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint, which must be received in the office of the Code Compliance Supervisor by 5:00 p.m. on the business day prior to the date set for appearance and plea.**

6.1.1 **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 re-mediation of the violation, the hearing shall be held at the same time and place set for appearance in the Complaint and Notice of Hearing. At this hearing, the defendant and the Code Compliance Supervisor or Officer shall be given an opportunity to state their position on the amount of the penalty and date of remediation to be imposed by the Hearing Officer.**

6.1.2 **The hearing for determination of penalty and remediation date may be waived if agreed to by the parties involved. Upon agreement to waive said hearing, the Hearing Officer shall impose action to correct the Development Codes violation. The Defendant and County Officer shall be notified by first class mail of the penalty and remediation date.**

6.1.3 **Upon denial of responsibility, the hearing of testimony and evidence shall be held at the time and place set for appearance in the Complaint and Notice of Hearing.**

6.1.4 **If the defendant does not enter a plea, defendant shall appear at the place, date and time set in the Complaint and Notice of Hearing. Failure of defendant to appear shall be considered a Default Judgment as set forth in Rule 11 of these rules.**

RULE 7 AMENDING THE COMPLAINT

7.1 **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.**

7.2 **The complaint may be amended to conform to the evidence alleged at the hearing if no additional or different violation is charged thereby and if substantial rights of the defendant are not thereby prejudiced.**

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

RULE 8 VOLUNTARY DISMISSAL

8.1 The Code Compliance Supervisor 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 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE

9.1 The complaint shall contain written notice that the defendant has the right to be represented by counsel or by another designated representative. The defendant must notify the Code Compliance Supervisor in writing at least fifteen (15) days prior to the hearing date for testimony and presentation of evidence of the defendant's election to be represented by counsel or by another designated representative. Otherwise, the Hearing Officer shall cause a postponement of these proceedings upon the request of the County Officer.

RULE 10 REPRESENTATION OF THE COUNTY

10.1 If the defendant is represented by legal counsel, then the County may then be represented by legal counsel.

RULE 11 DEFAULT

11.1 If the defendant 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 County Officer or the Code Compliance Supervisor 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.

11.2 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 Code Compliance Supervisor may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

RULE 12 SETTING ASIDE DEFAULT

12.1 A request by the defendant to set aside the default judgment entered under Rule 11 shall be made in writing no later than thirty (30) days after entry of default judgment.

12.2 The Hearing Officer's decision on a request to set aside default judgment is final and is not appealable to the Gila County Board of Supervisors.

RULE 13 DEFAULT BY COUNTY

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

RULE 14 CONTINUANCE

14.1 The Hearing Officer may, upon motion of any party or on his own motion, continue the hearing to the next hearing date if it appears that the interests of justice require continuation.

14.2 If the defendant and the County Officer agree in writing to continue a hearing, that hearing shall be continued to the next hearing date.

RULE 15 DISCOVERY (full disclosure of relevant facts between disputing parties)

15.1 No pre-hearing discovery shall be permitted absent extraordinary circumstances.

15.2 Immediately prior to the hearing, both parties shall present to the Code Compliance Supervisor any evidence that party intends to use during the hearing. The Code Compliance Supervisor will allow the opposing parties to review all evidence. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess to permit the parties to review all evidence.

RULE 16 SUBPOENAS

16.1 Either party may request the Code Compliance Supervisor 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.

16.2 A subpoena may be served by the Sheriff, his/her 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 17 QUESTIONING OF WITNESSES

17.1 All testimony shall be given under oath or affirmation.

17.2 The Hearing Officer may on his/her own motion call and examine witnesses, including the defendant.

17.3 No person may be examined at a hearing except by the following:

17.3.1 Hearing Officer.

17.3.2 Either the defendant or defendant's attorney or designated representative.

17.3.3 Either the plaintiff's or complainant's counsel.

RULE 18 ORDER OF PROCEEDINGS

18.1 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.

18.2 The order of proceedings shall be as follows:

18.2.1 Testimony of the Code Enforcement Officer or Code Compliance Supervisor and any other County witnesses.

18.2.2 Testimony of defendant and any other defense witnesses.

18.2.3 Testimony of County's rebuttal witnesses, if any.

18.2.4 Testimony of defendant's rebuttal witnesses, if any.

18.2.5 Argument of the parties or their counsel or designated representative, as permitted by the Hearing Officer.

18.2.6 Ruling by the Hearing Officer.

RULE 19 RULES OF EVIDENCE

19.1 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.

19.2 Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communication.

19.3 Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.

19.4 Documentary evidence may be received in the form of copies or by incorporation by reference.

19.5 The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.

RULE 20 RECORD

20.1 The County will record the proceedings by audio tape. The defendant may have the proceedings recorded by a court reporter provided by the defendant at the defendant's expense.

RULE 21 RULING OF THE HEARING OFFICER

21.1 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 Gila County Development Codes.

21.2 The ruling shall include the findings and conclusion of the Hearing Officer. The conclusions may include, at the discretion of the Hearing Officer, Orders imposing civil penalties, including but not limited to:

21.2.1 A certain date for remediation of violation(s) of the applicable Gila County Development Codes.

21.2.2 A fine as set forth as follows:

First Violation:

For an individual person-Not more than $700.00 per day of continuing violation.

For an enterprise-Not more than $10,000.00 per day of continuing violation.

Subsequent Violations of the Same Provision:

For an individual person-Not less than $100.00 nor more than $700.00 per day of continuing violation.

For an enterprise-Not less than $200.00 nor more than $10,000.00 per day of continuing violation.

21.2.3 A date for review of the Orders of the Hearing Officer. The purpose of this review is to allow the Hearing Officer to determine if the property has been

brought into compliance and to allow him/her to reduce or eliminate the fine previously imposed.

21.3 The Hearing Officer or Code Compliance Supervisor 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.

21.4 The Final Decision shall be filed with the Gila County Recorder's Office upon the expiration of the time for filing an appeal and upon determination that the defendant did not file an appeal. If the Defendant appeals the Final Decision and the Final Decision is upheld in whole or in part by the appellate process, the Final Decision as modified by the appellate process shall be filed with the Gila County Recorder's Office upon the exhaustion of all appellate remedies.

RULE 22 NOTICE OF RIGHT TO APPEAL

22.1 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 by the Board of Supervisor. The Defendant also shall be informed of the applicable time limit and referred to the rules governing the review process.

RULE 23 APPELLATE REVIEW

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

23.1 The party requesting review shall file a written Notice of Request for Appellate Review with the Code Compliance Supervisor within fifteen (15) days after the signing of the final decision, notice or order by the Hearing Officer.

23.2 The request for appellate review shall identify the decision on appeal. The request shall be signed by the appellant, his/her attorney, or his/her 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 may cause a recess or postponement of these proceedings by the Board of Supervisors.

23.3 The original, plus one copy of the notice of request for appellate review, shall be filed with the Code Compliance Supervisor, who shall serve a copy of the request for appellate review on the other party or the other party's attorney or designated representative.

23.4 Record on Appeal. The Board's review of the Hearing Officer's decision shall be limited to the record of the previous 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 20. If the Board determines that a transcript of the audio tape is necessary, a transcript shall be prepared by the Code Compliance Supervisor at the requesting party's expense. A trial de novo (new trial) is not permitted.

23.5 Transmission of Record

23.5.1.1 Upon receipt of the request for appellate review, the Code Compliance Supervisor shall, within twenty (20) working days, prepare and transmit the record to the Clerk of the Board of Supervisors.

23.5.1.2 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 Code Compliance Supervisor within ten (10) days after filing of the Notice of Request for Appellate Review.

23.5.1.3 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 fifteen (15) working days from the date of transmission of the record by the Code Compliance Supervisor.

23.6 Appellate Memoranda. Each party may file a written memorandum no later than fifteen (15) 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 previously presented before the Hearing Officer.

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

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

23.7 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.

23.8 Oral Argument. Oral argument shall be limited to five (5) minutes for 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.

23.9 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/assessment imposed by the Hearing Officer as long as it follows the penalty amounts set by the applicable ordinance or resolution and may:

23.9.1 Affirm the decision of the Hearing Officer;

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

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

23.9.4 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 Fifteen (15) calendar days of the Board's decision.

23.10 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 24 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.

24.1 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.

24.2 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 may order the imposition of additional penalties upon the defendant.

24.3 **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 17th **day of** November **, 2008.**

Gila County Board of Supervisors

By: _____
Jose M. Sanchez, Chairman

Approved as to form:

_____
County Attorney

ATTEST:

_____
Steven L. Besich, Clerk of the Board