

PINAL COUNTY

CIVIL HEARING OFFICE RULES

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www.pinalcountyz.gov

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RULE 1 SCOPE

- 1.1 These rules govern the procedure in all cases involving the adjudication of civil violations brought before the Pinal County Civil Hearing Office ("Hearing Office") pursuant to A.R.S. §§ 11-251, 11-251.05, 11-268, 11-815, and 11-1006; Pinal County Development Services Code ("PCDSC"), Title 2, Zoning; PCDSC, Title 6, Building Code; Pinal County Rabies and Animal Control Ordinance, Ordinance Number 101817-PCACO; Pinal County Alarm Systems Ordinance, Ordinance Number 111302-PCAS; and, any other Arizona statute, County code, ordinance or resolution authorizing the Hearing Office to hear civil violations.
- 1.2 The Hearing Office may hear appeals of a Final Decision of the Pinal County Housing and Community Department, when requested, and subject to the availability of a Hearing Officer. Such appeals are governed by the Pinal County Housing Division Public Housing Grievance Procedures.
- 1.3 An alleged violator charged with a civil violation under the above-referenced statutes, codes, ordinances or resolutions shall not be subject to a criminal charge arising out of the same facts.
- 1.4 An action before the Hearing Office does not preclude the Board of Supervisors, County Attorney, Code Enforcement 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.
- 1.5 Notices of County violations must follow either a "Ticket Complaint" format or "Non-ticket Complaint" format. Civil violations under Animal Control Ordinance 101817-PCACO shall follow the Ticket-Complaint format. Civil violations under PCDSC, Title 2, Zoning, PCDSC, Title 6, Building Code and Pinal County Alarm Systems Ordinance 111302-PCAS shall follow the Non-ticket Complaint format.
- 1.6 Any statute, code, ordinance or resolution later added to the Hearing Office's jurisdiction will follow procedural rules under the Ticket Complaint format or Non-ticket Complaint format according to the specific authority in that particular statute, code, ordinance or resolution.

RULE 2 DEFINITIONS

- 2.1 "BOARD OF ADJUSTMENT" means the Pinal County Board of Adjustment.
- 2.2 "BOARD OF SUPERVISORS" means the Pinal County Board of Supervisors.
- 2.3 "CLERK" means the Clerk of the Pinal County Civil Hearing Office.

- 2.4 "CODE ENFORCEMENT OFFICER" means a County animal control officer or county enforcement agent, zoning code enforcement officer, building inspector or code official, alarm coordinator, eligibility worker, or other County employee authorized to issue complaints for civil violations of a statute, code, ordinance or resolution.
- 2.5 "COMPLAINT" means a written notice of a civil violation of a statute, code, ordinance or resolution filed with the Hearing Office, by a Code Enforcement Officer.
- 2.6 "COUNSEL" means an attorney licensed to practice law in the State of Arizona.
- 2.7 "COUNTY" means Pinal County or any of its agencies or departments.
- 2.8 "DECISION" means the written ruling issued by the Hearing Officer upon the conclusion of a hearing.
- 2.9 "EARLY DISPOSITION PROCESS" means the procedure established by the Director of the Animal Care and Control Department for the early disposition of violations of Pinal County Ordinance 101817-PCACO.
- 2.10 "HEARING OFFICER" means the individual(s) appointed by the Board of Supervisors to hear and determine civil proceedings established by any statute, code, ordinance or resolution enacted or adopted by the Board of Supervisors under the authority granted by A.R.S. §§ 11-251, 11-251.05, 11-268, 11-815 (E) and 11-1006.
- 2.11 "IN VIOLATION" means the Hearing Officer's finding that the Respondent violated a statute, code, ordinance or resolution cited in the Complaint.
- 2.12 "NOT IN VIOLATION" means the Hearing Officer's finding that the Respondent did not violate the statute, code, ordinance or resolution cited in the Complaint.
- 2.13 "OTHER DESIGNATED REPRESENTATIVE" means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the Respondent to represent the Respondent in proceedings before the Hearing Office.
- 2.14 "PARTY" means the Respondent or the County.
- 2.15 "PERSONAL SERVICE," "PERSONALLY SERVED," means delivery of a Complaint or other papers to the Respondent personally or by leaving such Complaint or papers at the Respondent's dwelling house or usual place of abode with a 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.

- 2.16 "RESPONDENT" means the alleged violator.
- 2.17 "WAIVER OF SERVICE" means the Respondent's agreement to waive personal service of the Complaint and Notice of Hearing upon the Respondent and his or her voluntary submittal to the Hearing Office's jurisdiction.

RULE 3 COMMENCEMENT OF ACTION

Every action or proceeding brought before the Hearing Office for a civil violation of a statute, code, ordinance or resolution shall be commenced by the filing of a Complaint in the Hearing Office by a Code Enforcement Officer authorized to file such Complaints.

- 3.1 The Complaint shall be filed with the Clerk within seven (7) calendar days of its issuance, except for those Complaints where the Respondent fails to complete the early disposition process provided in Pinal County Rabies and Animal Control Ordinance, Ordinance Number 101817-PCACO.

RULE 4 SUFFICIENCY OF COMPLAINT

- 4.1 Ticket Complaints and Non-ticket Complaints shall contain the following information:
 - (a) Complaint number or case number;
 - (b) Name and mailing address of the Respondent;
 - (c) Address, parcel number, or other information sufficient to identify the location of the alleged violation;
 - (d) Reference to the statute, ordinance, code or resolution provisions allegedly violated;
 - (e) Written description sufficient to identify the alleged violation;
 - (f) Date of the alleged violation;
 - (g) Hearing date;
 - (h) Code Enforcement Officer's name and signature; and,
 - (i) Date complaint issued.

RULE 5 SERVICE OF COMPLAINT

All Complaints must be properly served on the Respondent.

- 5.1 Ticket Complaints. The Complaint shall be personally served on the Respondent at least ten (10) calendar days before the date set for hearing. The Code Enforcement Officer shall use a uniform traffic ticket and complaint for civil traffic cases pursuant to the rules of procedure in traffic cases adopted by the Supreme Court.
- 5.2 Non-ticket Complaints. The Complaint shall be personally served on the Respondent at least five (5) calendar days before the date set for hearing. If the Code Enforcement Officer is unable to personally serve the Complaint, the Complaint may be served in the same manner prescribed for alternative methods of service by the Arizona rules of civil procedure. A notice served on the Respondent other than by personal service shall be served at least thirty (30) calendar days before the hearing.

5.2.1 Complaints issued pursuant to the Pinal County Alarm Systems Ordinance 111302-PCAS may be served in accordance with 5.2, herein, or may be deemed properly served by certified or registered mail.

5.3 In addition to the above methods, service is deemed proper where Respondent submits a signed Waiver of Service form to the Clerk or where a Respondent appears and provides testimony or argument to the Hearing Officer without first raising the adequacy of service.

RULE 6 DISPOSITION PRIOR TO HEARING

A Respondent may dispose of the Complaint prior to the date set for hearing in the Complaint by submitting an Admission Form to the Clerk seven (7) calendar days prior to the date set for hearing, admitting the allegations of the Complaint. A Respondent who submits a properly executed Admission Form to the Clerk, within this time frame, is not required to appear at the date and time set for hearing on the Complaint.

6.1 Payment of the civil penalty must accompany the Admission Form, if applicable.

6.2 Respondent must agree to correct the violations prior to the date set for hearing, if applicable.

6.2.1 Where the Respondent submits an Admission Form and fails to correct the violation by the date set for hearing, the Clerk shall set the matter for hearing and notify the Respondent of the hearing date by first-class mail.

RULE 7 AMENDING THE COMPLAINT

A Complaint may be amended at any time before the Decision is issued by the Hearing Officer, if the substantial rights of Respondent are not thereby prejudiced. All amendments to a Complaint relate back to the date of the alleged violation listed in the Complaint.

7.1 Prior to Hearing. The Code Enforcement Officer shall file a Proposed Amendment Form with the Clerk and the Clerk shall mail the Proposed Amendment Form to the Respondent. The Respondent may object to the proposed amendment in writing or in person on the date and time set for hearing. The Hearing Officer shall rule on the proposed request for amendment on the date set for hearing.

7.2 At Hearing. The Code Enforcement Officer may orally request an amendment to the Complaint at the start of hearing and the Respondent may object to the request. The Hearing Officer shall rule on the proposed amendment prior to the start of hearing.

7.3 During Hearing. The Complaint may be amended to conform to the evidence adduced at the hearing.

RULE 8 VOLUNTARY DISMISSAL

The County may request dismissal of a Complaint in writing prior to hearing or by verbal motion at hearing. When such request is made in writing prior to hearing, the Code Enforcement Officer shall file the Notice of Dismissal with the Clerk and the Clerk shall mail a copy of the Notice to the Respondent. The dismissal of the Complaint is effective upon the filing of the Notice of Dismissal with the Hearing Office.

RULE 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE

9.1 A Respondent has the right to be represented by counsel or other designated representative at any time throughout the adjudication of the civil violation and must notify the Clerk, in writing, at least fifteen (15) calendar days prior to the date and time set for hearing of Respondent's election to be represented by such representative.

9.1.1 The written authorization shall: (1) state the name and address of the person authorized to act on Respondent's behalf; and, (2) state that the Respondent understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Office.

9.2 Respondent shall notify the Clerk of an election to be represented by counsel or other designated representative at least fifteen (15) calendar days prior to hearing. Failure to timely provide such notice is valid grounds for the County to request and obtain a hearing continuance.

RULE 10 REPRESENTATION OF THE COUNTY

The County Attorney's Office may represent and present evidence on behalf of a County department.

RULE 11 ENTRY OF DEFAULT

The Hearing Officer may deem the allegations of the Complaint admitted and enter a default against a Respondent who fails to appear on the date and time set for hearing and fails to dispose of the Complaint prior to hearing. The County must provide evidence that the Respondent was properly served with a copy of the Complaint as provided by Rule 5, herein.

11.1 Entry of Default. A Hearing Officer who enters a default against a Respondent may also issue a civil penalty and/or issue a date for correction of the violation.

11.1.1 The Clerk shall notify the Respondent of entry of default by first-class mail.

11.2 Default Judgment. The entry of default becomes a final judgment against the Respondent thirty (30) calendar days after its entry.

11.2.1 The Clerk shall notify the Respondent of entry of default judgment by first-class mail.

RULE 12 SETTING ASIDE DEFAULT

A Respondent may request that an entry of default or a default judgment be set aside.

12.1 Entry of Default. Respondent may file a written notice requesting the entry of default be set aside. The written notice must be received by the Clerk within thirty (30) calendar days of the entry of default. Upon receipt of a written notice to set aside an entry of default, the Clerk shall set the matter for default hearing.

12.1.1 The Hearing Officer may set aside an entry of default against a Respondent for good cause shown. Where the entry of default is set aside, the matter will proceed immediately to hearing on the merits of the alleged violation.

12.2 Default Judgment. Respondent may file a written notice requesting a default judgment be set aside. The written notice must be received by the Clerk within thirty (30) days of the date of the default judgment. Upon receipt of a written notice to set aside a default judgment, the Clerk shall set the matter for default hearing.

12.2.1 The Hearing Officer may relieve a Respondent from a default judgment for reasons of mistake, excusable neglect, inadvertence, misrepresentation, or any other justifiable reason where necessary to prevent a manifest injustice. Where a default judgment is set aside, the Clerk shall set the matter for hearing on the merits of the alleged violation and notify the parties of the date and time set for hearing.

12.3 The Hearing Officer's Decision on a request to set aside an entry of default or a default judgment is final and is not appealable to the Board of Adjustment or Superior Court.

RULE 13 DEFAULT BY COUNTY

If no witnesses for the County, excluding the Respondent, appear 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 14 ADDRESS OF RESPONDENT

Where the Respondent is properly served with a copy of the Complaint as provided by Rule 5, herein, the Respondent shall inform the Hearing Office of Respondent's mailing address if different than the address shown on the Complaint. The Respondent must inform the Hearing Office of any address change throughout the adjudication process.

RULE 15 CONTINUANCE

- 15.1 The parties may continue a hearing, absent the Hearing Officer's approval, where good cause exists and both parties agree in writing to the continuance. The parties can only continue the matter once, without the approval of the Hearing Officer. All other continuances must be ruled on by the Hearing Officer.
- 15.2 The Hearing Officer, may upon motion of any party, or on his or her own motion, continue the hearing if it appears that the interests of justice require continuation.
- 15.3 When a hearing is continued, the Clerk shall provide the parties with a copy of a new Hearing Notice either in person or by first-class mail.

RULE 16 DISCOVERY

- 16.1 No party is required to engage in discovery unless directed by the Hearing Officer.
- 16.2 Immediately prior to the hearing, both parties shall provide copies of any prepared exhibits and written or recorded statements of any witness which may be offered at the hearing to the Clerk and the opposing party for recording and inspection purposes. 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 or denying admission of the evidence not so exchanged.

RULE 17 SUBPOENAS

The Hearing Office has the authority to issue subpoenas for the attendance of witnesses and/or production of documentary evidence pursuant to A.R.S. § 12-2212.

- 17.1 Requests for Subpoena. A party may request the Clerk to issue a subpoena by filing a written request with the Clerk at least fifteen (15) calendar days before the date of the hearing.
- 17.2 Service of Subpoena. The Clerk shall issue a subpoena by first-class mail, unless the party requesting the subpoena requests personal service. When requesting personal service of a subpoena, the Clerk shall prepare the subpoena and the party requesting personal service, at requesting party's expense, shall ensure that the subpoena is served by any person who is not a party and is not less than eighteen years of age.
- 17.3 Witness Fees. A subpoenaed person may request witness fees pursuant to A.R.S. § 12-303, which shall be paid by the requesting party.

RULE 18 HEARING PROCESS

- 18.1 All testimony shall be given under oath or affirmation.
- 18.2 The Hearing Officer may, on his or her own motion, call and examine witnesses, including the Respondent. The Hearing Officer may designate the Respondent, Respondent's counsel or other designated representative, the Code Enforcement Officer or County Attorney's Office to examine witnesses. Where the parties are represented by counsel, only the Hearing Officer or the party's counsel may call and examine witnesses.
- 18.3 The order of proceedings shall be as follows:
 - 18.3.1 Testimony and cross-examination of the Code Enforcement Officer and any other County witnesses.
 - 18.3.2 Testimony and cross-examination of Respondent and any other defense witnesses.
 - 18.3.3 Testimony and cross-examination of County's rebuttal witnesses, if any.
 - 18.3.4 Testimony and cross-examination of Respondent's surrebuttal witnesses, if any.
 - 18.3.5 Argument of the parties or their counsel or designated representative if permitted by the Hearing Officer.
 - 18.3.6 Written Decision of the Hearing Officer. The Hearing Officer may rule immediately or may defer such ruling for a reasonable period of time, not to exceed ten (10) calendar days.

RULE 19 RULES OF EVIDENCE

- 19.1 The Arizona Rules of Evidence do not apply to hearings held by the Hearing Office.
- 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 DUTIES AND POWERS OF THE HEARING OFFICER

- 20.1 Administers oaths and affirmations.
- 20.2 Rules upon admissibility of exhibits and motions.
- 20.3 Regulates the course of the hearing, excludes duplicative and/or irrelevant evidence, and if appropriate or necessary, excludes persons from the hearing for contemptuous conduct and strikes all related testimony of witnesses refusing to answer any proper questions.
- 20.4 Calls and examines witnesses.
- 20.5 Requests the parties state their respective positions concerning any issue in the case or theory in support thereof.
- 20.6 Ensures the just and speedy determination of every proceeding and adjourns the hearing as the needs of justice and good administration require.
- 20.7 Issues Decision.

RULE 21 BURDEN OF PROOF

The County has the burden of proof, by preponderance of the evidence, to prove a Complaint filed with the Hearing Office.

RULE 22 EXCLUSION OF WITNESSES

Any party may request that all other witnesses, except the parties, be excluded from the hearing until called to testify. The Hearing Officer may, in his or her discretion, grant or deny the request. If the request is granted, the Hearing Officer shall admonish each witness not to discuss the witness' testimony with anyone other than counsel in the case.

RULE 23 RECORD

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

RULE 24 DECISION OF THE HEARING OFFICER

The Hearing Officer shall issue a written Decision finding the Respondent in violation or not in violation of the cited statute, code, ordinance or resolution. Where the Respondent is found in violation, the Hearing Officer may impose a civil penalty as set forth in the applicable statute, code, ordinance or resolution and issue other orders as necessary.

- 24.1 The Decision shall contain a written notice of the right to appeal.

- 24.2 The Clerk shall serve a copy of the Decision on the parties.
- 24.2.1 In Person. A copy of the Decision may be served on a party at the conclusion of the hearing. The party shall acknowledge receipt of same by signing and dating the Decision in the Clerk's presence.
- 24.2.2 Respondent. The Clerk shall mail a copy of the Decision, within five (5) calendar days of its issuance, by first-class mail to the Respondent's last known mailing address. Service is complete five (5) calendar days after the date that the Decision is mailed.
- 24.2.3 County. The Clerk shall deliver a copy of the Decision to the Code Enforcement Officer or his/her supervisor. Service is complete upon the recipient's dated signature acknowledging receipt of the Decision.
- 24.3 The Community Development Director or his/her designee may record with the Pinal County Recorder's Office a notice of any violations found by a Hearing Officer. Any such notices may include, among other things, the code compliance case number, the property address (including the Assessor's Parcel Number), the current property owner's name, the date that the Hearing Officer found the violation(s), and the amount of the fines imposed.

RULE 25 NOTICE OF RIGHT TO APPEAL

Any party may appeal the Hearing Officer's Decision. The written notice of the right to appeal provided by the Hearing Office shall provide the rights to appeal to include the applicable time limit, the location and manner of filing the notice of appeal, and shall make reference to the statutory reference or rules governing the appeal process.

RULE 26 APPEAL OF HEARING OFFICER DECISION - TICKET-COMPLAINT

A Hearing Officer's Decision on a Ticket Complaint is appealable to the Pinal County Superior Court. The procedure for such review is set forth in Arizona Revised Statutes, Title 12, Chapter 7, Article 6, Section 12-901 et seq.

RULE 27 APPEAL OF HEARING OFFICER DECISION - NON-TICKET COMPLAINT

A Hearing Officer's Decision on a Non-ticket Complaint, except for those filed pursuant to Pinal County Alarm Systems Ordinance, is appealable to the Board of Adjustment. The procedure for such review is as follows:

- 27.1 The party requesting review shall file a written Notice of Appeal with the Hearing Office within fifteen (15) calendar days from the date the Decision is served.
- 27.2 The Notice of Appeal shall be filed on a form provided by the Hearing Office and shall specify the issues on appeal.

- 27.3 The original Notice of Appeal shall be filed with the Hearing Office and the Hearing Office shall send a copy of the Notice of Appeal to the other party, the other party's counsel or other designated representative, and the Community Development Director or his/her designee.
- 27.4 Record on Appeal. The Board of Adjustment's review of the Hearing Officer's Decision shall be limited to the record of proceedings before the Hearing Officer and no new evidence may be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Office's file, all evidence admitted at the hearing, and the audiotape required by Rule 23, herein.
- 27.4.1 Any party may have an official transcript included in the record by filing a notice with the Hearing Office and providing for preparation of the transcript at the party's own expense. The request for such transcript shall be made within ten (10) calendar days of the signed Notice of Appeal.
- 27.4.2 When an official transcript of the audiotape is not included in the record and the Board of Adjustment determines that a transcript is necessary, the Board of Adjustment may request an official transcript be prepared at the County's expense or request the Clerk of the Hearing Office to prepare an unofficial transcript.
- 27.4.3 Where the Board of Adjustment adjudges the record insufficient, or not in proper condition to enable the Board of Adjustment to adjudicate the issues, it shall remand the matter to the Hearing Office for a trial de novo, to be conducted in accordance with the procedures established for hearings provided in Rules 18 et seq., herein. The matter will not be subject to the provisions of Rules 27.6, 27.7, 27.8. or 27.9, herein, relating solely to appeal.
- 27.5 Transmission of Record to the Board of Adjustment
- 27.5.1 Upon receipt of the Notice of Appeal by the Hearing Office, the Clerk shall, within thirty (30) calendar days, prepare and transmit the record to the Community Development Director or his/her designee.
- 27.5.2 The parties may stipulate that the review may be heard 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 Office within fifteen (15) calendar days after the Notice of Appeal is filed
- 27.5.3 Upon transmission of the record, the Clerk shall send notice by first-class mail to all parties that the record has been transmitted to the Board of Adjustment.

- 27.5.4 Upon receipt of the transmitted record, the Community Development Director or his/her designee shall provide written notice to the parties that written memoranda are due within fifteen (15) calendar days from the date of transmission of the record.
- 27.6 Memoranda on Appeal. Each party may file a written memorandum no later than fifteen (15) calendar days following the date of transmission of the record to the Board of Adjustment as to why the Board of Adjustment should affirm, reverse, modify or vacate the Hearing Officer's Decision. The memorandum shall not raise new facts or issues that were not brought before the Hearing Officer.
- 27.6.1 Each party shall file the original plus three copies with the Community Development Director or his/her designee.
- 27.6.2 No memorandum filed shall exceed five (5) typewritten double-spaced pages in length, unless an exception is granted by the Chair of the Board of Adjustment.
- 27.7 Notice of Board of Adjustment's Hearing. Upon receipt of the record from the Hearing Office, the Community Development Director or his/her designee shall place the case on the Board of Adjustment's agenda and shall mail the parties written notice of the date, time and place of hearing. The notice shall be mailed by first-class mail not less than ten (10) calendar days prior to the Board of Adjustment meeting at which the matter will be heard. The hearing may be continued by the Board of Adjustment for good cause.
- 27.8 Oral Argument. Oral argument shall be limited to ten (10) minutes to each party, unless extended by the Board of Adjustment. One person shall speak for each side unless this requirement is waived by the Board of Adjustment. 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.
- 27.9 Final Decision of the Board of Adjustment. After hearing on appeal and consideration of the previously transmitted record and filed memoranda, the Board of Adjustment may increase, decrease or modify any penalty imposed by the Hearing Officer as long as it follows the penalty amount set by the applicable codes, ordinances or resolutions and may:
- 27.9.1 Affirm, in whole or in part, the Decision of the Hearing Officer;
- 27.9.2 Reverse, in whole or in part, the Decision of the Hearing Officer;
- 27.9.3 Vacate, in whole or in part, the Decision of the Hearing Officer and remand to the Hearing Office for further proceedings.
- 27.10 Written notice of the Final Decision of the Board of Adjustment shall be hand-delivered or mailed by first-class mail to all parties by the Community

Development Director or his/her designee within five (5) calendar days of the Board of Adjustment's Final Decision.

RULE 28 APPEAL OF BOARD OF ADJUSTMENT'S FINAL DECISION

The Board of Adjustment's Final Decision is appealable to the Pinal County Superior Court. The procedure for such review is set forth in Arizona Revised Statutes, Title 12, Chapter 7, Article 6, Section 12-901 *et seq.*