

F. ANN RODRIGUEZ, RECORDER
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ORDINANCE NUMBER 2006- 63

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS, PIMA COUNTY, ARIZONA, RELATING TO PLANNING AND ZONING AND BUILDING SAFETY, REPEALING ESTABLISHED ZONING ENFORCEMENT RULES OF PROCEDURE AND ADOPTING NEW ZONING AND BUILDING CODE ENFORCEMENT RULES OF ADMINISTRATIVE PROCEDURE IN ACCORDANCE WITH A.R.S § 11-807 AND 11-808(E) & (F).

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

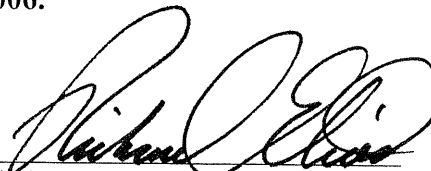
SECTION 1. That Ordinance 1985-189 is hereby repealed.

SECTION 2. That Pima County Zoning Code and Building Code Enforcement Rules of Administrative Procedure, attached as Exhibit A, are hereby adopted.

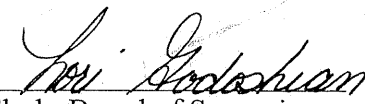
SECTION 3. This ordinance shall become effective on December 1, 2006.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona

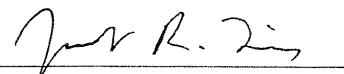
this 5th day of September, 2006.


Chairman, Board of Supervisors

ATTEST:


Clerk, Board of Supervisors

APPROVED AS TO FORM:


Deputy County Attorney


Director, Pima County Department
of Development Services

140000 000001

Pima County Zoning Code and Building Code Enforcement Rules of Administrative Procedure

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Pima County Zoning Code and Building Code Enforcement Rules of Administrative Procedure

Chapter 1 Administration

101 Scope

These rules shall apply in all cases involving the adjudication of zoning and building code violations before the zoning or building code enforcement administrative Hearing Officer (“Hearing Officer”), as established pursuant to A.R.S. § 11-808(E) and the Pima County Zoning Code §§ 18.95.030 and 18.101.060 and the Pima County Building Code in § 15.04.050.

102 Definitions

Building Code. Any building-related codes adopted and/or enforced by Pima County.

Building Official. The Chief Building Official or his or her representative.

Chair of the Board of Supervisors. The chair or, in the absence of the chair, the person acting as chair.

Complaint. Zoning Code or Building Code Enforcement Citation.

Counsel. An attorney licensed to practice law in the State of Arizona.

County. Pima County.

Inspector. Either Zoning Inspector or Building Official.

Other designated representative. A person over eighteen 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 be in a form sufficient to satisfy the Hearing Officer that the person has in fact been authorized to act on the defendant’s behalf and that the defendant understands and agrees to be bound by actions taken by the other designated representative in proceedings before the Hearing Officer.

Parties. The defendant and the County.

Zoning Inspector. The Chief Zoning Inspector or his or her representative.

4-11-2019 10:00:00 AM

Chapter 2

Commencement of Action

201 Commencement of Action

Every action or proceeding brought before the Hearing Officer for a violation of the Zoning Code or the Building Code shall be commenced by the issuance of a Zoning Code or Building Code Enforcement Complaint by a Zoning Inspector or Building Official.

202 Zoning Code or Building Code Enforcement Action

The Zoning Code or Building Code Enforcement Citation shall be in a standard form adopted by the Pima County Development Services Department and shall include, at a minimum, the following information:

- a. citation number,
- b. name and address of the defendant,
- c. address, tax code number, or other information sufficient to identify the location of the alleged violation,
- d. notice of date, time, and location of hearing,
- e. reference to the code provisions allegedly violated,
- f. description or notice of violation,
- g. date of alleged violation,
- h. inspector's name and signature, and
- i. date of citation.

203 Sufficiency of Complaint

No Complaint shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation, which the defendant is alleged to have committed if the Complaint contains either a written description or the Zoning Code or Building Code designation of the violation.

204 Amending Complaint

204.1 Amending Complaint Prior to Judgment

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

204.2 Amending Complaint to Conform to Evidence

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 of the defendant are not thereby prejudiced.

204.3 Date of Complaint

All amendments to a Complaint relate back to the date the Complaint was issued.

205 Appearance and Entry of Plea

205.1. Responsibility

The defendant or defendant's counsel or other designated representative may:

- a. admit responsibility for the violation(s) and accept the recommendations, if any, of the inspector,
- b. admit responsibility for the violation(s) and reject the recommendations, if any, of the inspector, or
- c. deny responsibility for the violation(s).

205.2 Appearance

The defendant shall admit or deny responsibility for the violation(s) and accept or reject any recommendations by the inspector either by appearing in person or by mailing to the Hearing Officer, by the hearing date set on the Complaint, a form provided by the Pima County Development Services Department or, in lieu of the form, a short statement signed by the defendant or defendant's counsel or other designated representative admitting or denying the allegations of the Complaint and accepting or rejecting the recommendations of the inspector.

205.3 Admitting Responsibility

If the defendant admits responsibility and accepts the recommendation(s) of the inspector, as provided in 205.1 (a), the Hearing Officer shall enter judgment in accordance with the recommendation(s). The Hearing Officer may, in his or her discretion, extend the time for compliance or lessen the fine imposed, but in no case may the Hearing Officer impose a greater fine or lessen the time for compliance.

205.4 Rejecting Recommendations

If the defendant admits responsibility and rejects the recommendation(s) of the inspector, as provided in 205.1 (b), the Hearing Officer shall set a time and place for determination of the civil sanction for the violation, and shall mail notice of same to the defendant or defendant's counsel or other designated representative and the inspector. At the hearing for the determination of sanctions, the defendant or defendant's counsel or other designated representative and the inspector shall be given an opportunity to state their position on any question properly before the Hearing Officer. If there are no recommendations of the inspector included with the Complaint, the procedure set forth in this paragraph shall apply.

205.5 Denying Responsibility

If the defendant denies responsibility, as provided in 205.1 (c), the Hearing Officer shall set the matter for hearing and notify the defendant and the inspector of the time and place of the hearing. The defendant's failure to either admit or deny responsibility shall be deemed to be a denial.

206 Notice of Hearing and of Right to Counsel or Other Designated Representative

206.1. Service and Notice of Representation

If the provisions of 205.4 or 205.5 apply, a hearing shall be set within 120 calendar days after the filing of the Complaint. The Zoning Inspector or the Building Official or his or her authorized agent shall serve the defendant with notice of the hearing pursuant to A.R.S. § 11-808(E). The defendant shall be provided written notice of the right to be represented by counsel or by other designated representative and that the right is waived unless the defendant notifies the Hearing Officer in writing at least ten calendar days prior to the hearing date of the defendant's election to be represented by counsel or by other designated representative. Such notice to the defendant shall specify the appropriate place and manner for filing his notice of counsel or of other designated representative.

Chapter 3
Conduct of Hearing and Judgment

301. Discovery

301.1 Pre-Hearing Discovery

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

301.2 Discovery

Immediately prior to the hearing, both parties shall 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, in the Hearing Officer's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

302. Continuance

302.1 Continuance of a Hearing

The Hearing Officer may, upon the written motion of any party accompanied by a waiver of personal service allowing for service by mail for an amended hearing notice, or on the Hearing Officer's own motion, continue the hearing for a reasonable period of time if it appears that the interests of justice so require.

302.2 Notice to Parties

Absent extraordinary circumstances, no hearing shall be continued by the Hearing Officer without notice to both parties.

302.3 Both Parties

The Hearing Officer shall notify both parties in writing of the new hearing date.

303. Oath

All testimony shall be given under oath or affirmation.

304. Questioning of Witnesses

304.1 Witness

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

304.2 Examination of Witnesses

No person may be examined at a hearing except by the Hearing Officer, the defendant, the defendant's counsel or other designated representative, the Zoning Inspector, the Building Official or the County's counsel.

305. Rules of Evidence

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. Nothing in this rule is to be construed as abrogating any recognized privilege.

306. Witnesses

All witnesses for the County’s case in chief, other than the defendant, shall be required to testify prior to the defendant being required to testify or to produce any evidence. However, a witness not called to testify in the County’s case in chief may be called in rebuttal to testify to an issue raised by the defense.

307. Order of Proceedings

The order of proceedings shall be generally as follows:

- a. Testimony and cross-examination of County’s witnesses.
- b. Testimony and cross-examination of defense witnesses.
- c. Testimony and cross-examination of County’s rebuttal witnesses, if any.
- d. Testimony and cross-examination of defense surrebuttal witnesses, if any.
- e. Argument of the parties or their counsel or other designated representative, if permitted by the Hearing Officer.
- f. Ruling by the Hearing Officer. The Hearing Officer may rule immediately or may defer such ruling for a reasonable period of time. The ruling may include the findings, conclusions and opinion of the Hearing Officer applying the facts, supported by substantial evidence, to the Zoning Code and/or Building Code as interpreted by the Chief Zoning Inspector or Chief Building Official.

308. Record of Hearing

A record of the proceedings shall be made by audiotape. In addition, a record of the proceedings may be made by videotape or by a court reporter, if provided by a party at the party’s expense.

309. Default by County

If no witness for the County appears at the time set for hearing, the Hearing Officer may dismiss the Complaint unless the Hearing Officer, for good cause shown, continues the hearing to another date.

310. Default by Defendant

310.1 Failure to Appear

If the defendant fails to appear as provided by these rules, the allegations of the Complaint may be deemed admitted, and the Hearing Officer may enter a default judgment for the County and impose a civil sanction and report such judgment to the Zoning Inspector or Building Official.

310.2 Military Service

If it appears from the face of the Complaint that the defendant was in the active military service, no default judgment may be entered. In such case, the Hearing Officer may notify the defendant’s commanding officer, if known, of the defendant’s failure to appear.

310.3 Proceeding in Absence of Defendant

In the event that the defendant fails to appear and the Hearing Officer does not enter a default judgment for the County, the Hearing Officer shall permit the Zoning Inspector or Building Official to proceed with the hearing in the defendant's absence.

311. Setting Aside Default Judgment

311.1 Setting Aside for Good Cause

For good cause shown, and upon terms the Hearing Officer deems just, the Hearing Officer may set aside a judgment entered upon a failure to appear. A motion to set aside the judgment shall be made in writing within 30 calendar days after entry of judgment.

311.2 Defendant not served

At any time the Hearing Officer shall set aside a judgment entered upon a failure to appear if it appears to the Hearing Officer that the defendant was not served a copy of the Complaint, or for any other reason where necessary to prevent a manifest injustice.

312. Responsibility

If the defendant, after hearing, is found responsible for a Zoning Code or Building Code violation, the Hearing Officer shall enter judgment for the County and impose a civil sanction not to exceed the equivalent of the maximum fine for a Class 2 Misdemeanor for each violation.

UNOFFICIAL RECORD

Chapter 4

Appeal of Hearing Officer Decision

401. Notice of Right to Appeal

Following judgment after hearing, the Hearing Officer shall deliver to all parties in person or by mail a written notice of the right to appeal to the Board of Supervisors any finding of fact or the amount of any fine imposed. Such notice shall be submitted on a form provided by the Pima County Development Services Department; it shall state that the right to appeal exists, the applicable time limit, and the location and manner of filing the notice of appeal, and shall refer the defendant to these rules governing the appeal process to the Board of Supervisors.

402. Right to Appeal

Any party may appeal to the Board of Supervisors from a final order or judgment of the Hearing Officer to challenge the factual findings made by the Hearing Officer or the amount of any fine imposed. The Board of Supervisors does not hear appeals involving questions of interpretation of the Zoning Code or Building Code. Such questions must be addressed through the appropriate channels for such appeals.

403. Notice of Appeal

403.1 Appealing Hearing Officers Decision

An appeal to the Board of Supervisors shall be taken by filing with the Hearing Officer or the Hearing Officer's secretary a written notice of appeal on a form provided by the Pima County Development Services Department, specifying the issues appealed.

403.2 Form of Appeal

The notice of appeal shall identify the specific Order of Judgment to which it is addressed. It shall be signed by the appellant, appellant's counsel, or other designated representative, and shall contain the names, addresses and telephone numbers of all parties and/or their counsel or other designated representatives.

403.3 Copy to Other Parties

When a party appeals to the Board of Supervisors, the Hearing Officer shall send a copy of the notice of appeal to the other party or the other party's counsel or other designated representative.

404. Time for Filing Appeal

The notice of appeal shall be filed within fifteen calendar days after the entry of the Order of Judgment appealed from.

405. Appeals to the Board of Supervisors

405.1 Record on Appeal.

Appeals to the Board of Supervisors 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 Officer's file, all evidence admitted at the hearing, and the recording required by 308. If the Board of Supervisors determines that a transcript of an

audiotape is necessary, a transcript shall be prepared at the County's expense. Only if the Board of Supervisors adjudges the record insufficient, or not in proper condition to enable the Board of Supervisors to adjudicate the issues, shall it grant a trial de novo, to be conducted in accordance with the procedures established for hearings before the Hearing Officer, and not subject to the provisions of sections 405.4, 405.6 and 405.7 below, relating solely to appeal.

405.2 Transmission of Record to the Board of Supervisors.

405.2.1 Upon receipt of the notice of appeal to the Board of Supervisors, the Hearing Officer shall, within 30 calendar days, prepare and transmit the record to the Clerk of the Board of Supervisors.

405.2.2 The parties may stipulate that the appeal may be heard on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing, filed with the Hearing Officer within 15 calendar days after the notice of appeal is filed.

405.2.3 Upon transmission of the record, the Hearing Officer shall send notice by mail to all parties stating that the record has been transmitted and that appellate memoranda are due within five business days.

405.3 Conduct on Board of Supervisors' Hearing.

The Chairman of the Board of Supervisors shall preside at all appeal hearings of the Board of Supervisors, and shall decide all procedural and evidentiary questions. Final decisions on the merits of a case shall be made upon motion and majority vote of the quorum. The Board of Supervisors shall apply the interpretation of the Code of the Chief Zoning Inspector or Chief Building Official (or of the Board of Adjustment, Technical Review Committee, or Building Codes Advisory Board, if applicable).

405.4 Appellate Memoranda to Board of Supervisors.

Either party may file a written memorandum within five business days after the filing of the record with the Clerk of the Board of Supervisors. No memorandum shall exceed five pages unless an exception is granted by the Chair of the Board of Supervisors.

405.5 Notice of Board of Supervisors' Hearing.

Upon receipt of the record from the Hearing Officer, the Clerk of the Board of Supervisors shall place the case on the Board of Supervisors' agenda and shall mail the parties written notice of the time and place of the hearing. The notice shall be mailed not less than five business days prior to the Board of Supervisors' meeting at which the matter will be heard.

405.6 Oral Argument on Appeal to Board of Supervisors.

Arguments on appeal to the Board of Supervisors shall be limited to five minutes for each party unless extended by the Chairman of the Board of Supervisors.

405.7 Disposition by the Board of Supervisors.

After consideration of an appeal, the Board of Supervisors may increase, decrease or modify any sanction imposed by the Hearing Officer and may:

- a. Affirm the findings and order of the Hearing Officer;
- b. Affirm in part and reverse in part; or
- c. Reverse the findings and order of the Hearing Officer.

405.8 Appeal to Superior Court from Decision of the Board of Supervisors.

Judicial review of the final decision of the Board of Supervisors shall be pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6, A.R.S. § 12-901, et seq. See Pima County Code § 18.95.030(D)(2).

406. Opinion from County Attorney

The Hearing Officer or the Board of Supervisors may request a written opinion from the County Attorney regarding a substantive legal issue arising out of a pending zoning enforcement matter, if the legal issue has a bearing on how the Hearing Officer or Board of Supervisors should decide in a given case. A copy of the opinion shall be given to all parties, who shall have five business days to respond to or oppose the opinion. This rule shall not be construed to require disclosure of a legal opinion of the County Attorney given in an executive session regarding the legal validity of an actual or potential claim against the County, even if the claim arises out of zoning enforcement action taken pursuant to these rules.

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