

## COMPLIANCE ENFORCEMENT

### Sections:

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#### 16.64.005 Definitions

For purposes of this Chapter, the following definitions shall apply:

- A. Board of Hearing Review – Board of Hearing Review means a board which consists of one member from each Board of Directors’ district and may be the same member appointed to the Flood Control District Advisory Committee who is responsible for reviewing final decisions and orders of the Chief Engineer for violations of this Title.
- B. Final Decision and Order – Final Decision and Order means the determination made by the Chief Engineer of a violation of this Title after considering the written findings and recommendations of the Hearing Officer.
- C. Hearing Officer - Hearing Officer means an individual who is appointed by the Board and is responsible for hearing and deciding all civil proceedings established by ordinance, regulation, rule or provision established by the Board.

#### **16.64.010**

#### **Unlawful activities designated-Penalty.**

- A. It is unlawful for any person or entity to engage in development which will divert, retard, or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without first securing written authorization from the District. Where the watercourse is a delineated floodplain, it is unlawful to excavate or build any structure affecting the flow of waters without securing written authorization required by A.R.S. 48-3613.
- B. It is unlawful for any person or entity to grade or disturb more than 1/3 acre of regulated hydriparian and/or mesoriparian and/or xeroriparian habitat and/or important riparian habitat, which are subject to permits under provisions of this chapter without first securing the permit.
- C. It is unlawful for any person or entity to neglect maintenance responsibilities on private drainage improvements as outlined in 16.38.
- D. It is unlawful for any person to fail to obtain a permit required by this title or to fail to comply with all the terms and conditions of a permit issued pursuant to this title.
- E. It is unlawful for any person to damage or interfere with a facility that is owned, operated or otherwise under the jurisdiction of the Flood Control District.
- F. Any person or entity violating the provisions of this title or any terms and conditions of a permit issued pursuant to this title and A.R.S. 48-3615 shall be guilty of a Class 2 misdemeanor.
- G. Any person or entity violating the provisions of this Title or any terms and conditions of a permit issued pursuant to this Title may be subject to a penalty in the amount not to exceed seven hundred and fifty dollars (\$750) for an individual, or ten thousand dollars (\$10,000) for an enterprise. Each day of continued violation constitutes a separate violation. (Ord. 2010 FC-1; Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part) 1999; Ord. 1988 FC-2 Art. 19, 1988)

## 16.64.020

### Abatement of violations - Procedures.

- A. Pursuant to A.R.S. 48-3615.01, violators of this Title are subject to civil penalties or other legal action for failure to comply with any provision of this Title.
- B. The Floodplain Administrator is authorized to investigate all complaints of suspected violations of this Title.
  1. Inspection. The Floodplain Administrator may conduct inspections to determine if violations exist.
    - a. During regular business hours, the District and its agents may have reasonable access for inspection pursuant as provided by written authorization issued pursuant to A.R.S. 48-3613, the terms or conditions of a permit, or to investigate a concern of non-compliance if no written authorization has been issued. In the case of an emergency, the District may enter at any time.
    - b. If the District and its agents are denied access for inspection, the Chief Engineer of the District may apply for an administrative search warrant from a local court of general jurisdiction and shall be served by a certified peace officer.
  2. Notice of Violation. Upon finding a violation, the Floodplain Administrator shall provide a written notice of violation to the property owner:
    - a. Identifying the applicable statutes, regulations, ordinances, or permit terms that have been violated.
    - b. Identifying the nature of the violation and any actions required to achieve compliance required by this title, including any additional information or engineering analyses required to show compliance.
    - c. Establishing that the notice is an order to cease and desist, effective on the date served.
    - d. Providing a time schedule for corrective actions for compliance, or to request a hearing.
    - e. Identifying the consequences for failure to take corrective action, including the imposition of monetary penalties.
  3. Upon request for a hearing, the Floodplain Administrator shall present evidence of the violation to the hearing officer.
- C. The Board shall appoint a Hearing Officer, who may be an employee of the District. The Board shall adopt written rules of procedure for the hearing and review of hearings. These rules of procedures shall be adopted in the same manner as the Ordinance.
- D. The Hearing Officer shall hear evidence from the alleged violator and from the District regarding the alleged violation and prepare and submit a written finding of facts and summary of violations, including any recommendations to abate or ameliorate the violation and any harm or damage arising from the violation and the imposition of any civil penalties. The written finding shall be submitted to the Chief Engineer and the owner or alleged violator within 30 calendar days of the hearing.
- E. The Chief Engineer is responsible for implementing procedures for an administrative hearing, and ensuring that a Hearing Officer is made available, if required.
  1. Upon receipt of the Hearing Officer's written findings and recommendation, the Chief Engineer shall render a final decision and order in writing. The final order and decision may include:
    - a. A determination of violation;
    - b. Actions necessary to mitigate the violation and any damage resulting from the violation; and
    - c. The imposition of a civil penalty pursuant to ARS 48-3615.01, if appropriate.
  2. Any party found in violation may request review of the final decision and order of the Chief Engineer by the board of hearing review pursuant to 16.64.070;

- F. The Board is responsible for adopting rules and procedures for hearings and review of decisions prescribed by this chapter, adopting and enforcing a civil penalty policy for violations of Title, appointing hearing officers to hear and determine actions, and establishing a board of hearing review.
- G. The final decision of the board of hearing review is subject to judicial review pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6.
- H. Establishment of civil penalties for violations of this Title or interference with the District's facilities does not preclude the District from pursuing other remedies as provided by law.
- I. If deemed appropriate by the Board, the Chief Engineer shall submit to the Administrator of the Federal Insurance Administration a declaration for denial of insurance stating that the property is in violation of a cited state or local law, regulation, or title, pursuant to Section 1316 of National Flood Insurance Act 1968, and as amended.
- J. The County and the District shall be entitled to recover all costs including administrative, engineering, and legal costs, as well as actual costs, pursuant to 16.20.100. (Ord. 2010 FC-1, Ord. 2005 FC-2 § 2 (part), 2005).

#### **16.64.030**

##### **Structures deemed nuisances-Remedies.**

To remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways in which impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

- A. Every new structure, building, fill, excavation, or development located or maintained within any regulatory floodplain, riparian habitat, or erosion hazard area in violation of this title and without written authorization from the Board is a public nuisance per se and may be abated, prevented, or restrained by action of the state or any political subdivision of the state.
- B. As a further remedy, the County and the District may withhold the issuance of building permits or floodplain use permits for any development or improvement on the same parcel, or on a contiguous parcel of land under the same ownership, where any improvement or development on the property is not in compliance with this title or any other provision of law relating to that development.
- C. In order to ensure that subsequent property owners are informed of existing violations on a property, the District may record written notifications of violations with the Office of the County Recorder. This notification shall run with the land. Upon mitigation of the violation, the District will record an additional notification indicating that compliance has been achieved. The District shall record this notice within 30 days of verifying that compliance has been achieved. (Ord 2010 FC-1, Ord. 2005 FC-2 § 2 (part), 2005; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1988 FC-2 Art. 7 (A) (2), (4)1988)

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#### **16.64.070 Appeal of the Final Decision and Order of Chief Engineer**

- A. The following hearing procedures apply to an appeal of a final decision and order of the Chief Engineer to the board of hearing review:
  - 1. The violator may appeal the final decision and order of the Chief Engineer to the board of hearing review by providing a written request on forms approved by the District to the Chief Engineer and the Clerk of the Board within 15 business days following receipt of the Chief Engineer's decision.

2. The written request may require technical evidence that disputes the findings of the Chief Engineer, and contains a concise explanation of all matters in dispute including any pertinent maps, drawings, data, or other information in support of the appeal petition. If required, the technical evidence must be prepared and sealed by an Arizona registered civil engineer, or for mitigation plans, by an Arizona registered landscape architect or other qualified professional.
  3. Incomplete petitions shall not be accepted.
    - a. The Chief Engineer shall notify the applicant within 5 working days of receipt whether or not the application is complete.
    - b. If the application is determined to be incomplete, the applicant shall submit additional materials and information as may be determined to be reasonably necessary by the Chief Engineer.
  4. The Chief Engineer shall prepare a final report and present the findings to the applicant and the Clerk of the Board within 15 days of receipt of the petition. The applicant shall have 30 calendar days to respond to the findings of the Chief Engineer. If the response includes new technical evidence, the Chief Engineer shall prepare a revised report, and present these findings to the applicant and the Clerk of the Board within 30 days of receipt of the new technical information.
  5. The board of hearing review meeting scheduled within 30 days after the Chief Engineers final report. After the meeting has been scheduled, no new technical information can be submitted. The board of hearing review shall meet at such times as it considers necessary for the transaction of appeals of any final decisions and orders of the Chief Engineer.
  6. The board of hearing review's public hearing process shall include the following:
    - a. A mailed notification to all parties who received the final decision and order, as well as all other parties who attended the violation hearing at which the Chief Engineer took action,
    - b. An opportunity for property owners and residents that are impacted by the violation to make comments on the appeal, and
    - c. Review by the Chief Engineer of the appeal by the appellant, the final staff report, and the circumstances and testimony presented at the hearing when such hearings are held.
  7. The board of hearing review shall render its decision within 30 calendar days of the close of the hearing.
- B. If a person alleged to be in violation continues the violation after the Chief Engineer has issued a final decision and order or after the board of hearing review has completed its review, the Chief Engineer may apply for a temporary restraining order or preliminary or permanent injunction from the superior court in accordance with the rules of civil procedure. (Ord. 2010 FC-1)



Sign In Sheet

Location: Regional Flood Control - Conference Room B Date: 3/10/10

Meeting: ORDINANCE REVISION OPEN HOUSE - FOCUS: COMPLIANCE ENFORCEMENT

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