

ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-1 4
TITLE: Administrative Rules of Procedure and Governing Rules for the Hearing Examiner in Code Enforcement Hearings	ADOPTED: 11/7/90
	AMENDED: 7/12/95
	ORIGINATING DEPARTMENT: Hearing Examiner

PURPOSE/SCOPE:

SECTION I: This Code shall be known by its short title: "The Administrative Code for the Hearing Examiner in Code Enforcement Hearings."

POLICY/PROCEDURE:

RULE 1.01- GOVERNING RULES

Except as may be provided by these rules of law, questions of order, the methods of organization and the conduct of business of the Hearing Examiner shall be governed by Roberts Rules of Order in all cases to which they are applicable.

RULE 1.02 - REGULAR MEETINGS

Hearings on code enforcement violations will regularly be scheduled on Monday from 2:00 PM to **5:00** PM. Special meetings may be set by the Hearing Examiner. Cases may be continued or rescheduled to Wednesdays or Fridays. A code enforcement meeting may be canceled when the meeting falls on a day designated by law or policy as a legal, national, or religious holiday. Regular meetings may be otherwise postponed or canceled. Notice of the postponement or cancellation of any regular meeting will be posted in the Lee County Courthouse and the office of the Hearing Examiner or such other place as may be appropriate as the Hearing Examiner designates. The meetings will be open to the public.

RULE 1.03 -AUTHORITY OF THE HEARING EXAMINER

- (a) Is obligated to rule on each matter in which he has no personal interest.
- (b) May continue the subject to the next regular meeting or reschedule the subject to a special meeting within a reasonable time period.
- (c) The Hearing Examiner shall be responsible for subpoenaing witnesses or alleged violators.
- (d) The Hearing Examiner shall place all witnesses under oath.

SECTION II: **RULES OF PROCEDURE**

The following rules of procedure shall govern all meetings of the Hearing Examiner.

RULE 1.04 - ORDERS

The Hearing Examiner shall prepare findings of fact and conclusions of law. These orders shall be reduced to writing.

RULE 1.05 - DUTIES OF CODE ENFORCEMENT DIRECTOR

The Code Enforcement Director, or his designee, shall be responsible for the following duties:

- (a) The Director, or his designee, shall notify each alleged violator of the hearing date, time and charges in the manner provided by ordinance or law.
- (b) The Director, or his designee, shall prepare a packet for the Hearing Examiner and the County Attorney, which includes the following:
 - 1. Copy of the notice of code violation;
 - 2. Copy of the complaint and text regarding the code violation;
 - 3. Notice of Hearing; and
 - 4. Any other pertinent materials.
- (c) The Director, or his designee, shall be responsible for the prosecution of all violations. These duties include the notification of all necessary witnesses, the production of all documents, and any other measures necessary to fully present the case.

RULE 1.06 - COUNTY ATTORNEY

A County Attorney shall be responsible for advising the Code Enforcement Director, or his designees. In addition, a County Attorney shall aid in the prosecution of code violations.

RULE 1.07 - RECORDS

- (a) The Hearing Examiner's **official** code enforcement files shall be kept by the Division of Codes and Building Services or its successor agency.
- (b) A **certified** copy of an order may be recorded in the public records of Lee County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property.

RULE 1.08 - MINUTES

- (a) The proceedings shall be recorded under the supervision of the Hearing Examiner and the recordings will be placed with the official files kept by the Division of Codes and Building Services. If the recording is transcribed for the purpose of judicial review, and certified to be correct, the transcript shall constitute the official transcript of the proceeding.
- (b) The recording may be **reviewed at the Division** of Codes and Building Services upon advance notice to that office. A copy of the recording is available at cost.

RULE 1.09 - INITIATION OF PROCEEDINGS

- (a) The Code Enforcement Director, or his designee, shall initiate proceedings by filing with the Hearing Examiner a written complaint signed by the Director or his designee. The complaint shall contain a short and concise statement of the ultimate facts giving rise to the violation and of the text of the code section violated and the demand for a **specific** action necessary to bring the alleged violation into compliance.
- (b) The Code Enforcement Director, or his designee, shall give notice of the date, time and place of the hearing and serve such notice on the violator, Service shall be made not less than seven (7) days before the day set for hearing, except for emergency action.

RULE 1.10 - CONDUCT OF HEARINGS

- (a) The Hearing Examiner shall advise the alleged violator of the code section which he is accused of violating and shall first seek to determine ~~if the~~ alleged violator admits or does not wish to contest such charge. If the alleged violator ~~admits~~ or does not wish to contest the violation, then the Hearing Examiner shall hear such testimony and evidence as is deemed necessary to ~~remedy the violation~~. ~~If the alleged~~ violator wishes to contest the code section in question, then the Hearing Examiner shall proceed to hear evidence from the Code Enforcement Director or his designee.
- (b) At the time and place ~~set for~~ hearing, the Director, or his designee, shall be represented by a County Attorney. All testimony shall be under oath. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. The Director, or his designee, and the alleged violator shall have ~~the right to~~ present evidence relevant to the issues, and to cross examine opposing witnesses, to impeach any witness regardless of which party is ~~first~~ called in to testify and to rebut the evidence presented against him. Irrelevant and unduly repetitious evidence shall be excluded. The Hearing Examiner shall at all times have the authority to refuse to hear any testimony that is irrelevant, repetitive, defamatory or spurious.
- (c) If, in the opinion ~~of the~~ Hearing Examiner, any testimony or documentary evidence or information presented at a hearing justifies allowing additional research or review in order to properly decide the case, then the Hearing Examiner, in his sole discretion, may continue the case to a specified time and date to research, review or view the violation. The Hearing Examiner's decision to grant or deny such a continuance shall not be subject to review.
- (d) The Hearing Examiner shall take ~~judicial notice~~ of all matters as are generally recognized by Florida courts.
- (e) Subpoenas requiring the attendance of witnesses or production of records, files and memoranda at any hearing may be issued by the ~~Hearing~~ Examiner upon written application of any party. The written application shall state the name and address of the witness to whom the subpoena is to be issued and the time and the place for the witness to appear. A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy to the person named in the subpoena. Proof of such service shall be made by affidavit by the person making service if not served by an officer authorized by law to do so. All witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this State. Payment of such fees and expenses shall accompany the subpoena. Each party shall bear expenses of subpoenaing their own witnesses and should accompany each request with a certified check covering all costs.
- (f) The burden of proving the alleged violation shall be on the Code Enforcement ~~Director, or~~ his designee, to prove by a preponderance of the evidence that the violation occurred in the manner set out in the complaint.
- (g) At the conclusion of the hearing, the Hearing Examiner shall issue a written order with findings of fact and conclusions of law based on evidence of record. In addition, the Hearing Examiner shall issue a written order specifying the actions necessary to abate any violation, the time during which abatement must be accomplished and the ~~fine~~ to be imposed if the ~~violation is~~ not abated.
- (h) Certified copies of orders may be recorded in the public records of Lee County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, and subsequent purchasers, successors in interest, ~~or~~ assigns. If an order is recorded in the public records pursuant to this subsection and the violation is abated by the date specified in the order, the Hearing Examiner shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

RULE 1.11 - FINES

- (a) The Hearing Examiner, upon notification by the Director that a previous order of a code enforcement violation has not been complied with by the set time or, upon finding that the same violation has been repeated by the same violator, may order the violator to pay a fine not to exceed ~~two~~ hundred ~~fifty~~ dollars (\$250.00) for a first

time violation for each ~~day~~ the violation continues past the date set for compliance or for each time the violation has been repeated, and a hearing shall not be necessary for the issuance of the order. For a repeat violation, the Hearing Examiner may ~~order the violator to~~ pay a fine not to exceed five hundred dollars (\$500.00) per day per violation for a repeat violation.

- (b) In determining the amount ~~of the fins~~, ~~if any~~, the Hearing Examiner shall consider the following factors:
1. The gravity of the violation;
 2. Any actions taken by the violator to correct the violation;
 3. Any previous violations committed by the violator; and
 4. Any other relevant factors.
- (c) The Hearing Examiner may reduce a fine imposed pursuant to this section when circumstances exist that warrant such action. The procedure is outlined in Rule 1.12 - Mitigation of Code Enforcement Fines/Liens.
- (d) A ~~certified~~ copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment ~~by the~~ sheriffs of this State, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into ~~compliance~~ or until judgment is rendered in a suit to foreclose on a lien filed pursuant to the ordinance, whichever comes first. After three (3) months from the filing of any such lien which remains unpaid, the Hearing Examiner may authorize the attorney representing the Commission to foreclose on the lien. No lien created pursuant to ~~this~~ ordinance may be foreclosed on real property which ~~is~~ homestead under Section 4, Article X of the Florida Constitution.

No lien provided under this ordinance shall continue for a period longer than ~~twenty (20)~~ years after the certified copy of an order imposing a fine has been recorded, unless within that time ~~an~~ action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a Notice of Lis ~~Pendens~~ was recorded.

RULE 1.12 -MITIGATION OF CODE ENFORCEMENT FINES/LIENS

The Hearing Examiner shall have the ~~power to~~ reduce fines and/or release liens under the following circumstances:

- (a) ~~It shall~~ be the responsibility of the respondent, or interested party, ~~to~~ request the Division of Codes and Building Services, Code Enforcement to schedule a mitigation hearing.
- (b) As to liens, the Director, or his designee, shall give sworn testimony when the violation is abated and fine amount of the accrued lien.
- (c) The respondent shall set forth the reasons why the accrued fine should be reduced or released. The Hearing examiner shall consider the following factors if they are applicable:
1. The gravity of the violation;
 2. Actions taken by the respondent to correct the violation;
 3. Whether there were previous violations committed by the violator;
 4. The cost upon the violator to correct ~~the~~ violation;

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5. The reasonable time necessary to correct the violation;
 6. The value of the **property** compared to the amount of the fine/lien;
 7. Any hardship the fine/lien would cause on the respondent;
 8. The time and cost incurred by the Division of Codes and Building Services, Code Enforcement, to get the violation corrected; and
 9. Any other equitable factors which would make the requested mitigation appropriate.
- (d) The respondent shall have the burden of proof to show why a fine should be reduced, or a lien reduced or released. If the respondent cannot attend the hearing, substantial reasons must be asserted as to the circumstances. The Director, or his designee, may submit any documentation received from the respondent that sets forth the reasons why the fine should be reduced or a lien reduced or released.
- (e) The conduct of the hearing shall follow rule 1.16, except where they conflict with the rules outlined in this section.
- (f) The **Hearing** Examiner's decision to grant or deny mitigation of a code enforcement fine or lien shall be reduced to writing, subject to appeal as a final administrative order to the Circuit Court.
- (g) The order, when properly recorded, shall serve to supersede the prior order imposing the fine.

RULE 1.13 - APPEAL

Any aggrieved party, including the Commission, may appeal a final administrative order of the Hearing Examiner's to the Circuit Court. Such an appeal shall not be a hearing de **novo** but shall be limited to appellate review of the record created before a Hearing Examiner. Any appeal shall be filed within thirty (30) days of execution of the order to be appealed.

RULE 1.14 - AUTHORITY AND CONSTRUCTION

These rules are adopted by authority of Florida Statutes, Chapters 125 and 162, and Lee County Ordinance No. **90-01** creating Lee County Code Enforcement Board and the Hearing Examiner as an alternative system for Code Enforcement hearings. Any provisions of these rules contrary to express authority shall be null and void. These rules of procedure are intended to be supplementary powers given to the Hearing Examiner and not a limitation upon those powers.