



## **BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

*Requested Board Meeting Date: July 1, 2014*

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### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

This Ordinance is necessary for the Regional Flood Control District to update its current compliance enforcement procedures by incorporating additional procedures for processing responses to floodplain enforcement notices and providing an administrative hearing process. The District's current compliance enforcement procedures are resource intensive and enforcement against unresponsive alleged violators is only available by action of the Superior Court. The Arizona Legislature passed new legislation in 2007 which authorized Flood Control Districts to establish new administrative hearing procedures and a more defined hearing process to address floodplain violations. The attached Ordinance will establish these new procedures for the District. Under these new procedures the Chief Engineer's Final Decision and Order regarding all floodplain violations will be appealable to a Board of Hearing Review established by the Board of Directors.

*CONTRACT NUMBER (if applicable): N/A*

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### **STAFF RECOMMENDATION(S):**

Staff recommends approval of the Ordinance.

CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: 0.0 and/or REVENUE TO PIMA COUNTY:\$ 0.0

FUNDING SOURCE(S): N/A  
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

YES       NO

**Board of Supervisors District:**

1     2     3     4     5     All

**IMPACT:**

**IF APPROVED:**

The District may begin to utilize a Hearing Officer process in order to create a more efficient compliance enforcement program.

**IF DENIED:**

The District will continue to utilize the existing cumbersome compliance enforcement process.

DEPARTMENT NAME: Regional Flood Control District

CONTACT PERSON: Eric Shepp TELEPHONE NO.: 4-4610

DIRECTOR'S SIGNATURE:   
Suzanne Shields, P.E.



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# MEMORANDUM

Director's Office  
Regional Flood Control District

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DATE: June 3, 2014

A handwritten signature in cursive script that reads "Suzanne Shields".

TO: Flood Control District Board of Directors

FROM: Suzanne Shields, P.E.  
Director

**SUBJECT: Rules of Procedures for Hearings and Review of Hearing for Compliance Enforcement and Appointing Hearing Officers and Board of Hearing Review – Board of Supervisors July 1, 2014 Agenda Item**

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The Flood Control District's current compliance enforcement procedures are resource intensive and time consuming as it involves taking alleged violators to Superior Court. More recent changes to the Arizona Revised Statutes allow flood control districts to modify their compliance enforcement procedures to introduce a process that uses a Hearing Officer. According to these Statutes, the Flood Control District Board of Directors is authorized to develop Rules of Procedures for Hearings and Review of Hearings as well as to appoint the Hearing Officers and appoint members of the Board of Hearing Review.

The proposed Ordinance establishes the rules of procedures for alleged violators to respond to a Notice of Violation by either accepting the District's conclusion or requesting a hearing. Upon completion of the hearing, the Hearing Officer would make a recommendation to the Chief Engineer. The Chief Engineer's Final Decision and Order is appealable to the Board of Hearing Review.

Since many floodplain violations involve zoning violations as well, the Resolution proposes to use the same Hearing Officers who serve as Hearing Officers for the Development Services Department. The Board of Hearing Review would be comprised of members from the Flood Control District Advisory Committee who have been appointed by the Flood Control District Board of Directors to represent each of their districts.

The Ordinance and Resolution have been reviewed by relevant stakeholders and has been recommended for adoption by the Flood Control District Advisory Committee.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Suzanne Shields".

Suzanne Shields, P.E.  
Director

SS/tj

Attachments

ORDINANCE NUMBER 2014-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT RELATING TO FLOODPLAIN MANAGEMENT AND SAFETY AND ADOPTING NEW RULES OF ADMINISTRATIVE PROCEDURES FOR THE ENFORCEMENT OF THE DISTRICT'S FLOODPLAIN MANAGEMENT REGULATIONS CONTAINED IN TITLE 16 OF THE PIMA COUNTY CODE.

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT THAT:

SECTION 1. THE BOARD OF DIRECTORS FOR THE FLOOD CONTROL DISTRICT RULES OF PROCEDURES FOR HEARINGS AND REVIEW OF HEARINGS, attached as Exhibit A, are hereby adopted pursuant to A.R.S. §§ 48-3603 and 48-3615.01.

SECTION 2. The Rules of Procedures for Hearings and Review of Hearings approved by this ordinance shall not limit or repeal any powers granted to the Pima County Flood Control District or its Chief Engineer under Arizona Law.

SECTION 3. In the event of any inconsistencies between the Rules of Procedures adopted by this ordinance and Chapter 64 of Title 16 of the Floodplain Management Ordinance, the Rules of Procedures adopted herein shall control.

SECTION 4. This ordinance shall be effective on execution by the Chair of the Pima County Flood Control District Board of Directors.

PASSED AND ADOPTED by the Board of Directors of the Pima County Flood Control District this \_\_\_\_ day of \_\_\_\_\_, 2014.

PIMA COUNTY FLOOD CONTROL DISTRICT  
BOARD OF DIRECTORS

ATTEST:

\_\_\_\_\_  
Sharon Bronson, Chair

\_\_\_\_\_  
Robin Brigode, Clerk of the Board

Approved as to form:

  
\_\_\_\_\_  
Deputy County Attorney

# EXHIBIT A

## BOARD OF DIRECTORS FOR THE FLOOD CONTROL DISTRICT RULES OF PROCEDURES FOR HEARINGS AND REVIEW OF HEARINGS

These Rules of Procedures for Hearings and Review of Hearings shall apply to the adjudication of violations of the floodplain management regulations under Title 16 of the Pima County Code pursuant to A.R.S. §§48-3603, 48-3613, 48-3614, 48-3615 and 48-3615.01.

### A. Definitions

1. Board of Hearing Review – 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 responsible for reviewing final decisions and orders of the Chief Engineer for violations of this title.
2. Chief Engineer - The director of the Flood Control District.
3. Designated Representative – A person, other than an attorney, over eighteen years of age confirmed in writing by the respondent to represent the respondent 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 respondent's behalf and that the respondent understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Officer.
4. Floodplain Administrator - The Chief Engineer or authorized representative of the Flood Control District appointed by the chief engineer, who is also a registered civil engineer in the state of Arizona, whose duty is to oversee administration and enforcement of the floodplain management regulations contained within Title 16 of the Pima County Code.
5. Hearing Officer – An individual who is appointed by the Board of Directors and is responsible for hearing and deciding all civil proceedings established by ordinance, regulation, rule or provision established by the Board.
6. Party – The respondent or the District.
7. Respondent – A person issued a Notice of Violation.

### B. Notice of Violation:

A Notice of Violation issued under P.C.C. §16.64.020(B)(2) may be issued the owner, occupant, or manager of the real property on which the development is located or the person who has damaged or interfered with District facilities. If the Notice of Violation is not issued to the property owner, a copy of the Notice shall be sent to property owner.

### C. Response to a Notice of Violation:

Upon receipt of a Notice of Violation (NOV), the respondent may do one of the following:

1. Admit the allegations by:
  - a. Appearing in person, by attorney, or by designated representative at a time and location given in the NOV and admitting the allegations, agreeing to acquire any required permit and to remedy the violation, damage, or interference in accordance with the terms determined by the Chief Engineer , or
  - b. Mailing or delivering to the Chief Engineer a form provided with the NOV or a written statement signed by the respondent in which the respondent admits the allegations, agrees to acquire any required permit and to remedy the violation, damage, or interference in accordance with the terms determined by the Chief Engineer.
2. Deny the allegations by:
  - a. Appearing in person, by attorney, or by designated representative at a time and location given in the NOV and denying the allegations and requesting a hearing, or
  - b. Mailing or delivering to the Chief Engineer a form provided with the NOV or a written statement signed by the respondent denying the allegations and requesting a hearing.
3. Upon receipt of the denial of the allegations or if the respondent does not respond within the timeframe provided in the NOV, the Floodplain Administrator shall forward the hearing request to the Hearing Officer.

**D. Scheduling a Hearing:**

1. On receipt of the request for a hearing, the Hearing Officer shall set a date, time and place for a hearing.
2. The Hearing Officer must serve a notice of hearing on the respondent and provide a notice of the hearing to the Chief Engineer at least 10 days before the hearing. Under A.R.S. § 48-3615.01(C), service of notice shall be by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the respondent.
3. If the respondent has failed to respond to the NOV within the timeframe provided in the NOV pursuant to subpart B.3, a copy of the NOV shall also be served with the notice of hearing.

**E. Amending a Notice of Violation:**

At any time before the judgment and if a party provides information that indicates the original violation or violations should be revised, the Hearing Officer may amend the NOV on motion of either party. Unless made during the hearing, motions to amend must be served on the party by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the other party.

**F. Hearing Procedures:**

1. Public participation. All hearings are open to the public. The hearing officer may permit members of the public to speak on a NOV but is not required to do so.
2. Record. All hearings shall be recorded by a mechanical recording device. A transcript of the proceedings may be made by a court reporter at the request of either party and expense of the requesting party.

3. Representation. An attorney or designated representative may represent the respondent at the hearing. If the respondent elects to be represented at the hearing, the respondent must notify the Hearing Officer and the Chief Engineer in writing at least 5 business days before the hearing. The District may be represented by an attorney at the hearing and is not required to give prior written notice of its representation.
4. Discovery. No pre-hearing discovery is permitted. Immediately prior to the hearing, both parties shall exchange any prepared exhibits and written, taped, or recorded statements of any witness which may be offered at the hearing. Failure to comply with this rule may result in the sanction of granting a recess or continuance to permit inspection of the exhibits or, at the Hearing Officer's discretion, denying admission of the evidence that was not exchanged.
5. Evidence. The Arizona Rules of Evidence do not apply. The Hearing Officer may consider any evidence that is relevant or material. The Hearing Officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning or exhibits and to expedite the hearing to the extent consistent with the presentation of all relevant testimony and information. Nothing in this rule is to be construed as abrogating any statutory provision relating to confidential or privileged communication.
6. Witnesses. Before testifying, every witness is required to declare that the witness will testify truthfully, by oath or affirmation administered by the Hearing Officer in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.
7. Order of hearing. The order of the hearing is as follows:
  - a. The Hearing Officer may permit opening statements.
  - b. The representative of the District shall present evidence of the violation described in the notice of hearing.
  - c. The respondent, the respondent's attorney, or the designated representative shall then be given an opportunity to present evidence at the hearing.
  - d. The representative of the District may then present rebuttal evidence.
  - e. The Hearing Officer may permit closing arguments.

#### **G. Failure to Appear at Hearing:**

If the respondent does not appear at the hearing, the Hearing Officer may continue the hearing, or upon finding that the respondent was given notice as required by A.R.S. § 48-3615.01(C), conduct the hearing in the respondent's absence and issue a written finding under A.R.S. § 48-3615.01(E). If the District fails to appear, the Hearing Officer may continue the hearing or find the respondent not responsible for the violation in the NOV.

#### **H. Hearing Officer Decision:**

1. The Hearing Officer shall issue a written finding to the Chief Engineer and respondent within 30 days of the hearing.
2. The Hearing Officer's finding shall include a determination that the respondent is responsible or not responsible for the violation alleged in the NOV.
3. If the respondent is found responsible, the written finding shall include the following:
  - a. A finding that the decision was supported by substantial evidence in the record
  - b. A recommendation for appropriate measures to abate or ameliorate any harm or damage arising from the violation and

- c. A recommendation for the imposition of civil penalties.

**I. Chief Engineer's Final Decision and Order:**

1. On receipt of the Hearing Officer's written finding, the Chief Engineer shall issue a final decision and order, which may include
  - a. A determination of violation,
  - b. An order directing the measures necessary to abate or ameliorate any harm or damage arising from the violation, and
  - c. The imposition of a civil penalty.
2. The final decision and order is effective on the date that the Chief Engineer mails the final decision and order to the respondent.

**J. Right to Review**

1. On written request of the respondent or other person subject to the Chief Engineer's decision, the Board of Hearing Review may review the decision and order of the Chief Engineer. The written request must be delivered to the clerk of the Board of Directors within 15 days after the date of the final decision and order. The section or sections of the Chief Engineer's final decision and order must be specified in the written request.
2. The Board of Hearing Review will set a time and date of a hearing to review the matter. The hearing shall be conducted based on the information presented to the Chief Engineer in issuing the final decision and order or, in an appeal from a determination of a violation by a hearing officer, the record before the hearing officer. On request, the information presented to the Chief Engineer in issuing the final decision and order shall be made available to any person. Based on the record before the Board of Hearing Review, the Board may deny, approve or modify the order of the Chief Engineer. The Board shall issue a written order of its decision including findings of fact and conclusions of law, and shall submit its final written order on the matter to the Chief Engineer within 30 days after completion of the hearing.
3. As provided by A.R.S. §48-3615.02, the final decision of the Board of Hearing Review is subject to judicial review under Title 12, Chapter 7, Article 6.

**K. Penalties:**

1. Pursuant to A.R.S. §48-3615(C), a person who violates the statute or regulations adopted under the statute may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor:
  - a. For an individual: A fine not to exceed \$750, as provided in A.R.S. §13-802(B).
  - b. For an enterprise: A fine not to exceed \$10,000, as provided in 13-803(A)(3); or
  - c. By agreement with the respondent, a nonmonetary penalty that serves the purposes of the District.
2. Penalty Calculation- Each day each violation continues constitutes a separate violation.
3. Strict Liability – In addition to any criminal or civil penalties available, a person who damages or interferes with a facility that is owned, operated, or otherwise under the jurisdiction of the District without written authorization from the District is strictly liable for both of the following:

- a. Any actual damages to persons, property or real property such as structures, landscaping, etc. that is caused by the damage or interference
- b. Payment of costs to the District for remediating the damage or interference under section 16.64.060 of the Floodplain Management Ordinance.