

# PROCEDURES FOR PUBLIC HEALTH VIOLATION HEARINGS

## Section 1. Purpose

This Ordinance establishes the procedures for hearings before a public health hearing officer to ensure due process to the property owner and to the enterprise and to allow an objective presentation of all necessary facts and materials to the hearing officer. The primary goal of these rules is to protect the lawful interests of the property owner, the County, and, above all, the citizens of Apache County, whose delegation of power and contribution of resources must be administered as a public trust for their benefit. The Director of the Apache County Public Health Services District shall be referred to in this Ordinance as the " Director."

## Section 2. Public Health Inspection and Enforcement

### A. Duties

1. It shall be the duty of the Environmental Health Coordinator, Director of Public Health Services, the Apache County Sheriff, and all Apache County officials otherwise charged with the enforcement and following the law within the provisions of this Ordinance.

### B. Violations

1. The Director shall investigate potential public health violations in Apache County. To enforce compliance with all applicable public health ordinances, the Director shall issue notices as may be necessary by this Ordinance.

### C. Notices

1. Should the Director determine that a public health violation is occurring on the subject property, the Director shall issue a Warning Letter by certified or registered mail or by hand delivery to the property owner. The Warning Letter shall include:
  - a. A street address or legal description sufficient for identification of the subject property;
  - b. The Section of the Ordinance violated;
  - c. A statement of reasonable specificity detailing the nature of the violation;
  - d. Steps necessary or actions required to bring the subject property into compliance with the Ordinance;
  - e. The date, fifteen (15) days from the date of the Warning Letter, on which all actions must be completed to remedy the violation.
  - f. The estimated cost to the County, chargeable to the owner, if the owner does not comply. (A.R.S. 11-268.A.1)

2. The Director shall re-inspect the subject property after the deadline stated in the Warning Letter. If the violation still exists, the Director has the authority to extend the compliance date by 30-day increments if significant and measurable progress is being made up to a not to exceed total period of 90 days or may issue a Notice of Violation and Demand for Compliance by certified or registered mail or by hand delivery to the property owner. The Notice of Violation and Demand for Compliance shall include:
  - a. A street address or legal description sufficient for identification of the subject property;
  - b. The Section of the Ordinance violated;
  - c. A statement of reasonable specificity detailing the nature of the violation;
  - d. Information on estimated cost to the County, chargeable to the owner, if the owner does not comply and any other possible penalties if the violation is not remedied;
  - e. Steps necessary or actions required to bring the subject property into compliance with the Ordinance;
  - f. The date, thirty (30) days from the date of the Notice of Violation and Demand for Compliance , on which all actions must be completed to remedy the violation (final deadline date);
  - g. A statement informing the property owner of his/her right to request a hearing regarding the violation within 10-days of this notice and including written directions of the hearing requirements and/or constraints.
3. The Director shall re-inspect the subject property after the deadline stated in the Notice of Violation and Demand for Compliance. If the violation still exists, the Director shall issue a Notice of Violation Hearing by certified or registered mail or by hand delivery to the property owner with written directions to the hearing requirements and/or constraints.
4. Notice of Violation Hearing shall be personally served on the alleged violator by the Director at least fourteen (14) days prior to the hearing. If the Director is unable to personally serve the notice, the notice may be served by registered or certified mail. A notice served upon the alleged violator other than by personal service shall be served at least twenty(20) days prior to the Violation Hearing.
5. The Notice of Violation Hearing shall include:
  - a. A street address or legal description sufficient for identification of the subject property;
  - b. The Section or Sections of any Ordinance or Regulation violated;

- c. A statement of reasonable specificity detailing the nature of the violation;
- d. The legal authority under which the hearing is to be held;
- e. The date, time, and location of the hearing;
- f. The nature of the hearing;
- g. Information on estimated cost to the County, chargeable to the owner, if the owner does not comply and any other possible penalties that may be issued by the hearing officer;
- h. A statement informing the property owner of his/her right to be represented by counsel and any limitations or constraints associated with that choice;
- i. A copy of the hearing procedures.

**D. Violation Hearing General Provisions**

1. Commencement. Every action or proceeding brought before the Hearing Officer for an Ordinance violation shall be commenced by the Director issuing a Notice of Violation and Demand for Compliance.
2. Notice. No notice shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation if the notice contains either a written description of the violation or reference to the applicable section of the Ordinance pertaining to the violation.
3. Right to Counsel or spokesperson. The alleged violator must notify the Hearing Officer in writing at least ten (10) days before the Violation Hearing date of the alleged violator's choice to be represented by counsel or spokesperson. Failure of the alleged violator to provide written notification constitutes a waiver of that right.
4. Discovery. Prehearing discovery shall be permitted upon written request to the Hearing Officer no later than fifteen (15) days prior to hearing.
5. Continuance. The Hearing Officer may, upon any motion of any party or on its own motion, continue the hearing for a period not exceeding sixty (60) days if it appears that the interests of justice so require. Absent extraordinary circumstances, no hearing shall be continued by the Hearing Officer without notice to both parties. The Hearing Officer, or the Hearing Officer's designated administrative assistant, shall notify both parties in writing of the new hearing date.

**E. Hearing Officer**

1. The Hearing Officer may be an employee of the County and shall be selected and scheduled by the Director.

2. The Hearing Officer may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths.
3. The Hearing Officer shall determine the location of the Violation Hearing.

**F. Appearance**

1. The alleged violator, counsel or spokesperson with the alleged violator, shall appear at the Violation Hearing at the date and time specified in the Notice of Violation Hearing to enter a plea of responsible or not responsible.
  - a. Admission of Responsibility. At the Violation Hearing, the alleged violator may admit responsibility by appearing in person on or before the Violation Hearing by providing by mail or otherwise to the Hearing Officer a short statement signed by the alleged violator or the alleged violator's counsel admitting the violation. Once a formal admission of responsibility is received by the Hearing Officer, the Hearing Officer shall vacate the Violation Hearing, issue a compliance order against the property owner and determine a penalty for the violation according to the guidelines set forth in Section 2(K) of this Ordinance .
  - b. Denial of Responsibility . A denial of responsibility may be made by appearing in person or on or before the Violation Hearing by providing by mail or otherwise to the Hearing Officer a denial signed by the alleged violator or the alleged violator's counsel. Once a formal denial of responsibility is received by the Hearing Officer, the Violation Hearing will proceed into the parties' arguments.
  - c. Failure to Appear. If the alleged violator fails to appear for the Violation Hearing, or fails to provide an admission or denial by mail or otherwise, by the date and time specified in the Notice of Violation Hearing, the allegations filed against the alleged violator shall be deemed admitted, and the Hearing Officer shall enter default judgment for the County and issue a compliance order against the violator.

**G. Order of Procedure**

1. The order of the Violation Hearing shall be as follows:
  - a. The Hearing Officer shall call the case and briefly describe the procedures to be followed.
  - b. The County makes its statement.
  - c. The testimony of the County's witnesses is presented.
  - d. The respondent' s statement is made.
  - e. The testimony of the respondent's witnesses is presented.
  - f. The statements and testimony of other attendees are presented at the discretion of the Hearing Officer .
  - g. The respondent' s rebuttal is presented.



2. Any final decision shall include findings of fact and conclusions of law, separately stated.
  - a. Findings of fact shall be based exclusively on the evidence.
  - b. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
3. Upon request a copy of the decision or order shall be delivered or mailed to each party and to his/her attorney of record.
4. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

**K. Penalties**

1. If the Hearing Officer finds that the property owner is responsible for the public health violation, the Hearing Officer may issue a compliance order and civil penalty against the property owner.
2. A compliance order issued pursuant to this section may provide for a civil penalty of not more than seven hundred fifty dollars for each violation by an individual and not more than five thousand dollars for a violation by an enterprise. A compliance order shall not impose a civil penalty for the same acts for which a court has previously imposed a civil or criminal penalty.
3. In determining the amount of a civil penalty under this section, the Director and the Hearing Officer shall consider the following:
  - a. The seriousness of the violation from the perspective of health and safety.
  - b. As an aggravating factor only, any economic benefit that results from the violation.
  - c. The history of the same or analogous violations.
  - d. The economic burden of the penalty on the violator.
  - e. Any good faith efforts to comply with the applicable requirements.
  - f. The duration of the violation as established by any credible evidence.
  - g. Payment by the violator of penalties previously assessed for the same violation.
  - h. Other factors affecting the public health and safety the Director deems relevant.
4. The Hearing Officer may waive any penalties imposed pursuant to this section if the violation is remedied within a reasonable time after the compliance order is issued.
5. The Director shall deposit all penalties collected pursuant to this section in the general fund of the County.

6. A compliance order issued pursuant to this section is final and enforceable in Superior Court unless the respondent files an appeal to the Director within fifteen (30) days after receiving the compliance order.

**L. Appeals**

1. An appeal of the Hearing Officer's final decision must be filed with the Director of the Apache County Public Health Services District within **fifteen (15)** days after the final decision was ordered and written. If the respondent fails to file an appeal within the thirty (30) days, the Hearing Officer's decision is final and enforceable.
2. On appeal, the Director may affirm, modify or vacate the Hearing Officer's decision. The Director shall consider the factors prescribed in Section 2(K)(3).
3. The Director's decision is enforceable as a judgment in superior court. The Director's decision is subject to appeal pursuant to A.R.S. Title 12, Chapter 7, Article 6.