

**ADMINISTRATIVE CODE
BOARD OF LEE COUNTY COMMISSIONERS**

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-14
TITLE: Administrative Rules of Procedure and Governing Rules for the Hearing Examiner in Code Enforcement Hearings	ADOPTED: 11/7/90
	AMENDED: 7/12/95, 6/12/12, 2/26/2013, 3/18/14, 6/2/20, 8/2/2022
	ORIGINATING DEPARTMENT: Hearing Examiner

Purpose/Scope:

This Code will be known by its short title: “The Administrative Code for the Hearing Examiner in Code enforcement Hearings.”

RULE 1.01 GOVERNING RULES

The organization and administration of code enforcement matters, including public hearings, will be governed by this Administrative Code, Chapter 2, Article VII of the Land Development Code (LDC) and Chapter 162, Florida Statutes, as may be amended.

RULE 1.02 REGULAR MEETINGS

Hearings on code enforcement violations will be scheduled at least bi-weekly. Lien mitigation hearings will be scheduled monthly. The Hearing Examiner may schedule special hearings and continue cases to other days, as needed. Code enforcement hearings may be cancelled when the hearings fall on a day designated by law or policy as a legal, national, or religious holiday. Regular hearings may be Postponed or cancelled, as needed by the Hearing Examiner or the Division of Codes and Building Services. Hearings will be open to the public, but no public testimony will be allowed unless the person is called as a witness.

RULES 1.03 through 1.04 RESERVED

RULE 1.05 DUTIES OF CODE ENFORCEMENT DIRECTOR

All references to the Director will include their designee.

- (a) The Director will notify alleged violators of the hearing date, time, and alleged violation in the manner provided by LDC Section 2-424 and Florida Statutes.
- (b) The Director will:
 - 1. Prepare a packet for the Hearing Examiner and the County Attorney that includes copies of the following:
 - a. Notice of code violation;
 - b. Complaint and text regarding the code violation;
 - c. Notice of Hearing; and
 - d. Other pertinent materials;
 - or
 - 2. Make the official code enforcement file part of the record before the Hearing Examiner.

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- (c) The Director is responsible for prosecution of violations. This duty includes the notification of witnesses, the production of documents, and other measure necessary to fully present the case.

RULE 1.06 COUNTY ATTORNEY

A County Attorney may assist code enforcement staff in the prosecution of code violations as needed.

RULE 1.07 RECORDS

The Hearing Examiner's Orders and the official code enforcement files will be maintained by the Division of Codes and Building Services or its successor agency.

RULE 1.08 RECORDINGS AND MINUTES

- (a) Proceedings will be recorded. 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 constitutes the official transcript of the proceeding.
- (b) The Hearing Examiner's Office will document the actions taken on each case on the agenda.

RULE 1.09 INITIATION OF PROCEEDINGS

- (a) The Director will initiate proceedings by filing with the Hearing Examiner a written complaint, signed by the Director
1. The complaint must contain:
 - a. A concise statement of the facts giving rise to the violation;
 - b. The text of the code section alleged to be violated; and
 - c. The actions necessary to correct the alleged violation.
 - (b) The Director will give notice of the date, time, and place of the hearing and serve the notice on the violator. Service will be made no less than 10 days before the day set for hearing, except for hearings addressed by Section 2-424(e), immediate hearings.
 - (c) Recurring Violations. The Director may present cases for a finding of violation by the Hearing Examiner where the violation was corrected before the hearing, but was not corrected within the time specified in the notice, if the notice of violation indicates this potential. This finding may be used to establish a future "repeat violation," as defined by the LDC. The Director must provide evidence that the violator received one or more prior notices of violation or citations for violating the same provision within the previous five years, which were corrected before hearing. Cases deemed Recurring Violations by the Director may not be resolved through the entry of a Code Enforcement Agreement, as described in Rule 1.10(b). A finding of violation for a Recurring Violation may only be entered after the case is presented to the Hearing Examiner at a hearing.

RULE 1.10 CONDUCT OF HEARINGS

- (a) Code Enforcement Hearings will be conducted in accordance with this Administrative Code.
- (b) Code Enforcement Agreement.
1. Before the hearing, the Director will give the alleged violator the opportunity to admit or to not contest the charged violation.
 2. Subject to the Director's approval, an alleged violator that admits or does not contest the violation may enter into an Agreed Order with Lee County in accordance with LDC Section 2-2 and this

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Administrative Code. Any charged violation deemed by the Director to be a Repeat Violation or Recurring Violation will not be resolved through a Code Enforcement Agreement; all Repeat Violations and Recurring Violations will proceed to hearing.

3. Code Enforcement Agreements must be in writing and executed in recordable form. Code Enforcement Agreements will, at a minimum contain the following elements:
 - a. Terms and obligations necessary to abate the violation,
 - b. A specific time frame in which the violator must abate the violation,
 - c. The fine to be imposed if the violation has not been abated within the specified timeframe and in accordance with the terms and obligations of the Agreement, and.
 - d. The costs incurred by the County in the prosecution of the case.
4. The Director may, at his or her option, record Code Enforcement Agreements in the public records. If a violation associated with a recorded Code Enforcement Agreement is abated, the Director will record a satisfaction or release of the Code Enforcement Agreement at the expense of the violator.
5. The Director may present any violation that has not been abated in accordance with the Code Enforcement Agreement to the Hearing Examiner on the Date of Correction Review, as set forth in Rule 1.10(g).
6. The Director reserves the right to enforce the terms and conditions of Code Enforcement Agreements in a court of competent jurisdiction by injunction or through an action for specific performance.
7. The Director reserves the right to unilaterally terminate a Code Enforcement Agreement and request an immediate hearing before the Hearing Examiner if the Director has reason to believe the violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature. If the Director exercises this right, the Director shall make a reasonable effort to notify the Respondent.

(c) Changes to the Agenda

1. The Director may withdraw cases from the agenda without action by the Hearing Examiner at any time before a finding of violation. Once withdrawn, no further action will be taken on the case.
2. The Director will present cases requesting continuance for action by the Hearing Examiner. The Hearing Examiner may grant an uncontested motion for a continuance prior to the scheduled hearing date and document the grant with a written Order of Continuance. The continuance, whether granted based on a motion or at the hearing, will be acknowledged on the record at the scheduled hearing.
3. At the start of the hearing the Director will announce the scheduled cases that were abated, withdrawn or continued prior to the start of the hearing, as well as scheduled cases that were resolved through a Code Enforcement Agreement. Those cases will be removed from the agenda.

(d) Hearing Testimony and Actions.

1. The Hearing Examiner will hear the cases remaining on the day's agenda.
2. Testimony must be under oath. Formal rules of evidence will not apply, but the proceedings will be governed by fundamental due process. The Director and the alleged violator will have the right to present evidence relevant to the issues, and to cross examine opposing witnesses, to impeach

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witnesses, and to rebut the evidence presented against them. The Hearing Examiner may refuse to hear any testimony that is irrelevant, repetitive, defamatory, or spurious.

3. If the alleged violator is not present or represented and the Hearing Examiner has no questions about the alleged violation, the Code Enforcement Officer may submit a sworn affidavit to replace or supplement the Officer's testimony.
4. If, in the opinion of the Hearing Examiner, testimony or documentary evidence or information presented at a hearing justifies additional review to properly decide the case, then the Hearing Examiner may continue the case to a specified time and date. The Hearing Examiner's decision to grant or deny a continuance is not subject to review.
5. The Hearing Examiner will take judicial notice of matters generally recognized by Florida courts.
6. The Director must prove by a preponderance of the evidence that the violation occurred in the manner set out in the complaint.
7. The Hearing Examiner will issue an Order at the conclusion of the hearing of each code case unless the matter is continued for additional review.
 - a. The Order will include findings of fact, conclusions of law, and a decision based on evidence in the record.
 - b. If the Hearing Examiner finds no violation, the Hearing Examiner will issue an Order Finding No Violation, dismissing the case and ending hat code enforcement action.
 - c. Initial violations: If the Hearing Examiner finds a violation, the Hearing Examiner will issue an Order Finding Violation. The Order will indicate the actions necessary to correct the violation, the fine to be imposed, and the award of the County's costs of prosecution. The Hearing Examiner may allow additional time to correct the violation, where appropriate, which will be reflected in the Order. If the Hearing Examiner does not grant additional time to correct the violation, the Order Finding Violation may also serve as an Order Imposing Fine.
 - d. Repeat violations: If the Hearing Examiner finds a repeat violation, the Hearing Examiner will issue an Order Finding a Repeat Violation and will indicate actions necessary to correct the violation. The Order will also indicate whether the violation has been verified as corrected, the fine to be imposed, the date from which the fine will run, and the costs of prosecution to be awarded to the County.

(e) Written Orders.

1. Orders will be reduced to writing by the Hearing Examiner's Office and copies of the Order will be provided to the noticed violator by electronic or regular mail and to County Staff by electronic mail.
2. The Director may record the original or a certified copy of an Order of Violation in the public records of Lee County. Once recorded, the Order constitutes notice of the violation and is binding upon the property owner and subsequent purchasers, successors in interest or assigns when the violation concerns real property. If an Order is recorded in the public records and the violation is corrected by the date specified in the Order, the Hearing Examiner will issue an Order Acknowledging Compliance that will also be -recorded in the public records.

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(f) Date of Correction Review – Order Finding Violation. The Hearing Examiner will accept sworn documentary evidence on whether the violation has been corrected by the date indicated in the Order Finding Violation when the Order provides additional time to correct the violation. No hearing is required for review of this evidence and the County will not provide notice to the violator beyond the Order Finding Violation.

1. The Hearing Examiner may issue an Order of Continuance, upon a showing of good faith efforts by the violator to correct the violation or other good and reasonable cause. The Order may continue the date of correction and withhold the imposition of fines and liens.
2. The Hearing Examiner will issue an Order Acknowledging Violation Correction if the evidence provided demonstrates the violation has been corrected in accordance with the Order Finding Violation. The Order will acknowledge payment of the prosecution costs ordered in the Order Finding Violation where appropriate. If prosecution costs have not been paid, the Director may record the Order Acknowledging Violation Correction as a lien on the property, as provided in Rule 1.12 Liens.
3. The Hearing Examiner will issue an Order imposing the fine ordered in the Order Finding Violation (Order Imposing Fine) if the evidence provided demonstrates the violation has not been corrected in accordance with the Order Finding Violation. The Order Imposing Fine will acknowledge payment of the prosecution costs awarded in the Order Finding Violation where appropriate. The Director may record the Order Imposing Fine as a lien on the property, as provided in Rule 1.12, Liens.
4. Correction Evidence Hearing. The violator may request a hearing to contest the evidence provided by the Director that the violation was not corrected in accordance with the Order Finding Violation. The violator must file the request with the Director within 20 days of the date the Order Imposing Fine was provided to the violator. The request must include a summary of the evidence the violator will provide showing the violation was corrected as required by the Order Finding Violation.

(g) Date of Correction Review – Code Enforcement Agreement. The Hearing Examiner will accept sworn documentary evidence on whether the violation has been corrected by the date indicated in the Code Enforcement Agreement. No hearing is required for review of this evidence and the County will not provide notice to the violator beyond the Code Enforcement Agreement.

1. The Hearing Examiner’s review will be limited to determining whether abatement occurred in accordance with the Agreement. If the Hearing Examiner determines that the violation was not abated in accordance with the Agreement, the Hearing Examiner will enter an Order Imposing a Fine that is reflective of the agreed upon fine amount contained in the Agreement, plus any outstanding costs incurred by the County in the prosecution of the case. Unless otherwise agreed upon by the Director, the Hearing Examiner shall not impose a fine that is different than the fine agreed upon within the Agreement, change the required date of abatement, or change the required method of abatement for the violation. The Director will provide notice to the Hearing Examiner of any extensions granted with respect to the required date of abatement.
2. Correction Evidence Hearing. The violator may request a hearing to contest the evidence provided by the Director that the violation was not corrected in accordance with the Code Enforcement Agreement. The violator must file the request with the Director within 20 days of the date the Order Imposing Fine was provided to the violator. The request must include a summary of the

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evidence the violator will provide showing the violation was corrected as required by the Code Enforcement Agreement.

RULE 1.11 FINE AMOUNTS

- (a) When issuing an Order Imposing Fine, the Hearing Examiner shall order the violator to pay a fine that will be no less than twenty-five (\$25.00) dollars per day and no greater than two hundred fifty (\$250.00) dollars per day for each day the violation continues past the date set for correction. If the finding of violation pertains to a repeat violation, the Hearing Examiner shall order the violator to pay a fine that will be no less than fifty (\$50.00) dollars per day and no greater than five hundred (\$500.00) dollars per day, and shall assess the daily fine for the entire time period the violation has existed.
- (b) The Hearing Examiner will consider the following factors in determining the fine to be imposed above the minimum fine specified in Rule 1.11(a):
 - 1. Gravity of the violation;
 - 2. Actions taken by the violator to correct the violation;
 - 3. Previous violations committed by the violator; and
 - 4. Other relevant factors.
- (c) Unless part of an Agreement to Mitigate, as described in Rule 1.13, a fine imposed through an Order Imposing Fine continues to accrue until the first of the following events:
 - 1. The violation is verified as corrected by the Director; or
 - 2. Judgment is rendered in a suit to foreclose the lien.

RULE 1.12 LIENS

- (a) The Director may record the original or a certified copy of an Order Imposing Fine and/or assessing prosecution costs in the public records of Lee County. Once recorded, the Order constitutes a lien against the property on which the violation exists and upon any other real or personal property owned by the violator in Lee County.
- (b) The Hearing Examiner may consider and approve a request to release specific property from the effect of a recorded lien if the Hearing Examiner finds that the lien is no longer valid against that property.
- (c) The Hearing Examiner may issue a partial release of the lien identifying the real property no longer encumbered by the recorded lien when determined to be appropriate.
- (d) Upon sufficient evidence that the violation has been corrected and the payment of the lien or mitigated lien amount, the Hearing Examiner will issue a Satisfaction of Lien, releasing the lien. Once recorded in the public records, the Satisfaction will serve to supersede the Order imposing Fine, and will result in the removal of the fine/lien from the violator's property/properties in Lee County.

RULE 1.13 MITIGATION OF CODE ENFORCEMENT FINES AND COSTS

The Hearing Examiner may reduce or eliminate fines and costs imposed by Hearing Examiner's Orders under the following circumstances:

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- (a) A property owner may request or authorize mitigation of the fines and costs imposed by an Order Imposing Fine.
1. A request for mitigation must be filed with the Division of Codes and Building Services.
 2. It is the responsibility of the requesting party to identify the Order to be reviewed, specify the relationship of the requester to the property owner, and provide a statement of the basis for the mitigation request.
 3. Mitigation requests will be adjudicated not more than 45 days from the date of filing the request with the Division of Codes and Building Services.
 4. Mitigation may not be considered until the violation has been corrected, unless pursuant to an Agreement to Mitigate.
- (b) The requester must explain the basis of the request to reduce or eliminate fines and costs. The requestor bears the burden of proving why a fine or cost should be reduced or eliminated.
- (c) The Director will make available to the Hearing Examiner the documentation received from the requestor, copies of the related Order Finding Violation and Order Imposing Fine, and the Director's summary of the accrued fine and prosecution costs.
- (d) The Director will give sworn testimony at hearing or by affidavit as to the date the violation was corrected, the prosecution costs incurred, and the accrued amount of the lien.
1. The Director may make a recommendation to the Hearing Examiner regarding the requested mitigation of the fine/lien.
 2. If the parties agree on a mitigated amount, the Director may present an Agreed Code Enforcement Mitigation Order to the Hearing Examiner. Agreed Orders will include:
 - a. The accrued lien amount;
 - b. The mitigated amount;
 - c. The time for payment of the mitigated amount; and
 - d. A condition stating failure to pay the mitigated amount by the specified date will result in reinstatement of the original lien amount.
 3. The Hearing Examiner will finalize the Agreed Mitigation Order within 15 business days of receipt from the Director. The Hearing Examiner may:
 - a. Accept and sign the Agreed Mitigation Order;
 - b. Issue an order requesting a modification to the Agreed Mitigation Order; or
 - c. Reject the Agreed Mitigation Order and request the Director to schedule the case for hearing.
 4. The requestor may elect a hearing in lieu of an Agreed Mitigation Order. The Division of Codes and Building Services will schedule mitigation hearings once a month unless the requestor demonstrates to the Director there are extenuating circumstances warranting expedited hearing.

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- (e) Based on the testimony and evidence provided, the Hearing Examiner will make a decision based on the following factors:
1. Whether mitigation:
 - a. Encourages the return of distressed properties to economic benefit;
 - b. Recognizes factors that may have prevented the timely correction of violations;
 - c. Achieves the county's goals of equitable, expeditious and effective enforcement of the County's codes;
 2. Gravity of the violation;
 3. Actions taken to correct the violation;
 4. Whether there were previous violations committed by the violator;
 5. Cost to correct the violation;
 6. Reasonable time necessary to correct the violation; and
 7. Time and cost incurred by the Division of Codes and Building Services.
- (f) If a request seeks to mitigate an Order Imposing Fine entered pursuant to a Code Enforcement Agreement, The Hearing Examiner must also find that any failure to timely abate the violation was either the result of excusable neglect or the requester not having the ability to timely abate the violation within the abatement timeframe due to factors outside of the requester's control and that the requester diligently pursued abatement of the violation once they were in a position to do so. The Hearing Examiner must make the findings set forth in this subsection and consider the factors set forth in Rule 1.13(e) before mitigating an Order Imposing Fine entered pursuant to a Code Enforcement Agreement.
- (g) A decision to grant mitigation of the code enforcement fine or lien may be conditioned, including a condition that failure to pay the mitigated amount will result in the return of the entire lien amount.
- (h) The Hearing Examiner's decision to grant or deny mitigation of a code enforcement fine or lien will be reduced to writing, and is a final order.
- (i) Agreement to Mitigate
1. The owner of property subject to a code enforcement lien may request an Agreement to Mitigate before the violation has been corrected if executed by the mitigation requester and Lee County.
 2. The Agreement to Mitigate must provide a plan for correction of the violation, including a date or time frame for completion of the plan; the amount of the accrued fine to be paid; the costs to be paid to the County; a date for payment; and a commitment by the mitigation requester to abide by the terms of the agreement or the original lien will be reinstated. The terms must be consistent with the mitigation review factors indicated in (e), above.
 3. In addition to providing the information addressed by Rule 1.13(c), the Director will provide a copy of the Agreement to Mitigate to the Hearing Examiner.
 4. A mitigation request that includes an Agreement to Mitigate may not be considered without a recommendation of approval by the Director and the County Attorney.
 5. The Hearing Examiner will:

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- a. Accept the original, executed Agreement to Mitigate;
 - b. Issue an order requesting modification; or
 - c. Decline to grant the requested mitigation and schedule a hearing to discuss revisions to the agreement.
6. The daily fine established under the initial code enforcement order will continue to accrue until the violation is corrected and the mitigated amount is paid in accordance with the Agreement to Mitigate unless specifically indicated otherwise by its terms. If the terms and conditions of the Agreement are not met, the daily fine will be reinstated from the date it had ceased and the full amount of the accruing lien will remain due.

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. Rules contrary to this express authority are 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.