

~ PUBLIC NOTICE ~

A Public Hearing will be held by the

Greenlee County Board of Supervisors

Tuesday, May 7, 2019 at 8:00 a.m.

(Please verify the date, time and place)

**in the *Second Floor Conference Room* of the
Greenlee County Courthouse Annex, 5th Street and Leonard,
253 Fifth Street, Clifton, Arizona, on a proposed**

ZONING ORDINANCE AMENDMENT

to consider a request by Greenlee County to revise the zoning regulations to refine definitions and hazard abatement, to add Hearing Officer, to revise enforcement methods and penalties. Additional information may be found on the County's Website.

<https://greenlee.az.gov/>

**ALL PERSONS INTERESTED MAY
APPEAR IN PERSON,
BY AGENT OR BY ATTORNEY.**

Additional information is available (including filing a written protest of the Amendment) at the County Engineer's Office, P.O. Box 908, 5th Street and Leonard, 253 Fifth Street, Clifton, Arizona from 8:00 A.M. until 5:00 P.M. Monday through Friday or call (928) 865 2072. Verify the time and date of meetings by calling (928) 865 2072. Accommodations for persons with disabilities need to be requested 72 hours in advance.

**By order of the
Greenlee County Planning Director,
April 15, 2019**

Italic and bold print are changes. Strike outs are deletions.

ARTICLE 2

Definitions

Sec. 201 General Rules

- (b) The word shall is mandatory and the **word** may is permissive.
- (c) The word lot includes the words plot, or parcel, **or piece of property**.

Sec. 202 Definitions

~~***Agriculture, General - A tract containing not less than five (5) contiguous acres which is used for the production of farm crops such as vegetables, fruit trees, cotton, grain, and other crops and their storage on the tract, as well as for the raising thereon of farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term general agriculture includes the operating of such a tract for one (1) or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the products; provided, however, that the operation of any such accessory uses shall be secondary to that of the farming activities and provided further that general agriculture does not include commercial pen feeding of garbage or offal to swine or other animals, commercial slaughter houses, meat packing plants, fertilizer yards, bone yards or plants for the reduction of animal matter.***~~

Agriculture, General - A tract, containing not less than five (5) contiguous acres, which is used for the production of farm crops (such as vegetables, fruit trees, cotton, grain, and other crops), and/or for the raising thereon of farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term general agriculture includes the operating of such a tract for one (1) or more of the above uses, including dairy farms, with the necessary accessory uses for treating or storing the products; provided, however, that the operation of any such accessory uses shall be secondary to that of the farming activities and provided further that general agriculture does not include commercial pen feeding of garbage or offal to swine or other animals, commercial slaughter houses, meat packing plants, fertilizer yards, bone yards or plants for the reduction of animal matter.

Dilapidated Structure - Any structure that is in such disrepair or is damaged to the extent that its strength or stability is substantially less than a new building or it is likely to burn or collapse and its conditions endangers the life, health, safety, or property of the public. The Planning Director or Building Official shall determine whether a structure is dilapidated. Dilapidated structures as determined shall include, but not be limited to, those buildings or structures that meet any or all of the following criteria:

- a) ***The structure's interior walls or other vertical structural members, list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.***
- b) ***The structure, exclusive of the foundation, has thirty-three percent (33%) or more damage or deterioration to the supporting member or member's structural assembly, or fifty-five percent (55%) damage or deterioration to the non-supporting enclosing our outside walls or covering.***
- c) ***The structure is infested by rodents, insects or other noxious pests, rendering it uninhabitable.***
- d) ***The structure exhibits conditions that present actual hazards or dangers.***
- e) ***The structure has been vacant and unsecured for more than forty-eight (48) hours, on more than one (1) occasion, during a previous twelve (12) month period.***

f) *The structure or their contents represents an imminent health or fire hazard.*

Home Occupation - An activity carried on by the occupant of a dwelling as a secondary use, including professional and semi-professional office **or rental of room(s)**, when conducted and entered from within the dwelling, in connection with which there is on public display of stock-in-trade upon the premises, not more than one (1) nonresident of the premises is employed and not more than one-fourth (1/4) of the floor area of one story of the principal building, or a detached home workshop of not more than two hundred (200) square feet in area is used for such home occupation; and provided that the residential character of the dwelling is not changed by said use and that such occupation does not cause any sustained change by said use and that such occupation does not cause any sustained or unpleasant or unusual noises, vibrations, noxious fumes, odors or cause and parking or traffic congestion in the immediate neighborhood.

Long term - A period of 180 calendar days or more.

Lot of Record - A lot which is part of a subdivision, the plat of which has been recorded in the office of the Greenlee County Recorder; or a lot, parcel or tract of land described by metes and bounds, the deed of which has been recorded in the office of the Greenlee County Recorder.

Mine - lands containing excavations, underground passageways, shafts, tunnels and workings, structures, facilities, equipment, machines or other property including impoundments, retention dams, tailings and waste dumps, on the surface or underground, used in, to be used in or resulting from the work of extracting minerals or other materials, excluding hydrocarbons. Mine includes that portion of a sand and gravel operation which mixes rock, sand, gravel or similar materials with water and cement or with asphalt, provided that the operation is either physically connected to the mine or is so interdependent with the mine as to form one integral enterprise.

Mining - those activities conducted to develop or extract materials from a mine including on-site transportation, concentrating, milling, leaching, smelting or other processing of ores or other materials. Mining includes mined land reclamation activities, but does not include permanent residential housing or the operating of a rock crusher.

Modular Home - A home manufactured elsewhere intended to be installed on permanent basis: ***on a permanent, fixed foundation without the use of interior piers.***

Non-Conforming Lot - A lot of record or parcel of land having less area, frontage or dimensions than required by these regulations for the zoning district in which it is located, but which was lawfully established and recorded prior to the effective date of these regulations or on the effective date of any applicable amendment to these zoning regulations or change in zoning district classification or boundary.

Non-Conforming Structure - A building, structure or portion thereof, the placement, height or area of which does not conform to the standards of lot coverage, yard space, height, floor area or distance between structures applicable to the zoning district in which such building is situated, but which legally existed prior to the effective date of these regulations or on the effective date of any applicable amendment to these zoning regulations or change in zoning district classification or boundary.

Public Nuisance - Includes, but is not limited to, a dilapidated building or an accumulation of rubbish, trash, weeds, filth, debris, junk or any other annoyance such as odor, lighting, etc. that constitutes a hazard to the public health and safety or is found to negatively impact a neighbor and/or their property as determined by Greenlee County Planning Department, Health Department, or other departments with jurisdiction over the condition.

Recreational Vehicle - A movable or portable dwelling unit ~~forty (40) feet or less in length and eight (8) feet or less in width~~, built on a chassis, designed primarily for temporary living quarters for recreational or travel use, which either has its own motive power or is mounted on or drawn by

another vehicle **and is normally licensed for highway use.**

Rubbish, Junk, Trash, Debris, and Filth - Shall include, but not be limited to: ordinary litter, refuse, used tires, waste, or rubble and remains thereof and similar material including the waste or rubble from any building.

Short term - a period less than 180 calendar days.

Exception - A relaxation or waiver of the terms of these regulations where such action will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of these regulations would result in unnecessary and undue hardship

Wall - Any structure for screening purposes forming a physical barrier, which is so constructed that 100 percent (100%) of the vertical surface shall be closed solid, except for approved gates or other access ways.

Weeds - Uncultivated vegetation of a combustible nature with an associated fire hazard which cannot be reasonably contained on the property where it exists and shall include, but not be limited to, dried grass higher than six inches (6"); or other dried vegetation higher than six inches (6"); tumbleweeds, branches or clippings; or dead trees, bushes or shrubs.

Sec. 308 Statutory Exemptions

(a) Nothing contained in these Zoning Regulations shall prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is not less than five (5) contiguous acres, as provided by Section ~~11-830~~ **11-812** of the Arizona Revised Statutes.

(b) Land shall be classified as being used for grazing purposes if fifty percent (50%) or more of the income from the land is derived from the use or rental of the land for grazing purposes. Land shall be classified as being used for general agricultural purposes if fifty percent (50%) or more of the income from the land is derived from the use or rental of the land for the production of agricultural products.

Sec. 311 Uses Permitted on Appeal

~~Uses designated as uses permitted on appeal by these zoning regulations may be permitted upon written approval of the Planning and Zoning in the Supervisorial district in which said uses are desired. Said Planning and Zoning may impose such stipulations and conditions as it determines are necessary or helpful in perceiving and protecting the character of the zoning district in which the said uses are to be located or to otherwise further the purpose of these Zoning Regulations.~~

Uses designated as uses permitted on appeal by these zoning regulations may be permitted upon written approval of the Commission. The Commission may impose such stipulations and conditions as it determines are necessary or helpful in preserving and protecting the character of the zoning district in which the said uses are to be located or to otherwise further the purpose of these Zoning Regulations.

Sec. 314 Additional Exempt Uses

The following uses shall be permitted in any zoning district and exempted from the provisions and requirements of these Zoning Regulations, unless otherwise specified:

(a) Public rights-of-ways for streets, alleys, and drainage ways, and other public rights-of-way;

(b) Essential service of public utilities **regulatable** by the Arizona Corporation Commission which are duly authorized to furnish to the public any of the following services: electricity, gas, steam, telephone or telegraph services, water, sewage disposal, and other pipelines by erecting, constructing, altering or maintaining underground, surface or overhead facilities and attendant appurtenances, including, but not limited to transmission, distribution, collector, feeder systems,

poles, towers, wires, mains, drains, sewers, pipes, cables, alarm boxes, booster stations, substations, call boxes, traffic signals, hydrants, fences, walls, screens, and other similar equipment and accessories in connection therewith which are reasonably necessary for the furnishing of adequate service by such utilities for the public health, safety, convenience or general welfare;

(c) Essential services of other public agencies such as drainage, flood control, irrigation, fire and sanitary districts and including facilities, attendant appurtenances and accessories used by such agencies;

(d) All non-communications equipment, transmitters, towers, and antennas; and

(e) Facilities which are otherwise exempted herein shall conform to the minimum yard requirements for the district in which located.

Sec. 315 Splitting of Lots

No use permit shall be issued for a lot or parcel that has been reduced in size below the minimum lot area or lot width required by these Zoning Regulations when such reduction takes place after the effective date of these Zoning Regulations. ***Lots that are split then recombined under a single owner after a split retain their original status prior to splitting.***

Sec. 316 Exceptions for Lots of Record Non-Conforming Lots

~~(a) For any lot or parcel of record having less width or area than that required by the use regulations of the zoning district in which it is located and where such lot is shown on a tentative plat recorded prior to the effective date of these Zoning Regulations, or such lot or parcel had a bona fide deed or contract of sale in full force and effect at the time these Zoning Regulations became effective and said deed or contract of sale is of record in the office of the Greenlee County Recorder, then said lot or parcel of record may be used for any permitted use or use permitted on appeal in the zoning district, provided all use regulations are complied with, however, For a Non-Conforming Lot the minimum yards and distances between principal buildings maybe reduced, and the maximum lot coverage may be increased as shown below:~~

<i>Minimum Front Yard</i>	<i>15 feet</i>
<i>Minimum Side Yard</i>	<i>5 feet</i>
<i>Minimum Rear Yard</i>	<i>20 feet</i>
<i>Minimum Distance Between Principal Buildings</i>	<i>7 feet</i>
<i>Maximum Lot Coverage</i>	<i>50 Percent</i>

~~(b) For any lot shown upon a tentative subdivision plat duly approved by the Commission prior to the time these Zoning Regulations became effective for which declaration of covenants, or deed restrictions were submitted with said tentative plat recorded prior to the time these Zoning Regulations became effective for which bona fide declaration of covenants conditions, or deed restrictions is of record in the office of the Greenlee County Recorder, was in full force and effect at the time these Zoning Regulations became effective, and remain in full force and effect, therefore said lots the declared minimum yards and distances between principal buildings and maximum lot coverage may be used in place of those of the zoning district in which it is located, provided such minimum yards and distance between buildings, and such maximum lot coverage shall not be reduced below those minimum or increased above that maximum allowed respectively in Section 316 (a).~~

Sec. 318 Amendments

All amendments, including proper notification and public hearing(s), shall be subject to this Ordinance and

to State Statutes. ***The Commission may impose such stipulations and conditions as it determines are necessary or helpful in preserving and protecting the character of the zoning district in which the said amendments are to be located or to otherwise further the purpose of these Zoning Regulations.***

Sec. 603 Permitted Uses

The following uses shall be permitted in RU, rural districts:

- (a) Single-Household Dwellings, including mobile homes and recreational vehicles;***
- (p) Recreational vehicles as a dwelling unit for a short term.***

Sec. 604 Uses Permitted on Appeal

The following uses may be permitted on appeal in RU, rural districts:

- (g) Recreational vehicles as a dwelling unit for a long term.***

~~Sec. 1702 Swimming Pools~~

~~Swimming pools shall be permitted in all zoning districts; however, no swimming pool shall be located in any minimum required front or side yard, nor shall any such pool be closer than seven (7) feet to any lot line. Every swimming pool shall be enclosed by a fence or wall not less than five (5) feet in height which is so constructed, gated and locked as to discourage unauthorized entry to such pool.~~

Sec. 1702 Open bodies of water

Man made, recreational water bodies shall be permitted in all zoning districts. No swimming pool, hot tub, or spa shall be located in any minimum required front or side yard, nor shall any such pool be closer than seven (7) feet to any lot line. Every architectural feature, swimming pool, hot tub, or spa deeper than 24 inches shall have a cover or a fence or other means to deny access to discourage entry by any means.

Sec. 1714 Use Prohibited in Residential Districts

~~***No yard or other open space surrounding an existing building in any transitional or residential district, or which is hereinafter provided around any building in any transitional or residential district, shall be used for the storage of junk, debris or obsolete vehicles; and no land shall be used for such purposes, except as specifically permitted herein.***~~

Rubbish, junk, trash, weeds, filth, debris or dilapidated buildings or obsolete vehicles which constitutes a hazard to public health and safety shall not be allowed to remain or stored on any parcel in any transitional or residential district; and no land shall be used for such purposes, except as specifically permitted herein.

Sec. 1724 Cemeteries

For purposes of these Zoning Regulations, cemeteries, ***including individual and or family burial plots or locations***, shall be considered as a use permitted upon appeal in any district. The application for such use permit shall indicate among other things the total number of lots, roads, ***legal access***, and landscaping and maintenance provisions.

Sec. 1727 Keeping of Livestock and Pets

Livestock, poultry and other animals, including horses ~~***in rural districts on appeal***~~ and household pets, may be kept in all zoning districts unless otherwise prohibited or regulated by these Zoning Regulations. Such animals shall be kept confined by fences or other restraints of sufficient strength and durability, or be otherwise under the control of its owner or keeper, to prevent such animals from roaming at large, unless

otherwise exempted by Section 308 of these Zoning Regulations or the Arizona Revised Statutes. Nothing contained therein shall relieve the owner or keeper of such animals from complying with all applicable rules and regulations of the County Health Department or others having jurisdiction.

ARTICLE 22

~~Violation and Penalty~~

~~Sec. 2201 Legal Procedure~~

~~Any building, structure or improvement set up, erected, built, or maintained or any use of property contrary to the provisions of these Zoning Regulations shall be and the same is hereby declared to be unlawful public nuisance, and the Greenlee County Attorney shall upon order of the Board of Supervisors or on his own initiative, immediately commence all necessary actions or proceedings for the abatement, enjoinder, and removal thereof in the manner provided by law; shall take such other lawful steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate, enjoin and remove such building or use and restrain and enjoin any person, firm building, moving or maintaining any such building or using any property contrary to the provisions for these Zoning Regulations or to otherwise violating these Zoning Regulations.~~

~~Sec. 2202 Penalties~~

~~Any person, firm or corporation whether as principal, owner, agent, tenant, employee or otherwise, who violates any provisions of these Zoning Regulations or who violates or fails to comply with any order or regulation made hereunder shall be guilty of a misdemeanor, upon conviction thereof shall be fined (\$300.00) per day. Such person, firm or corporation, shall be deemed guilty of a separate offense for each and every day during which such violation or failure to comply with these Zoning Regulations is committed, continued, or permitted.~~

~~Sec. 2203 Remedies~~

~~All remedies provided for herein shall be cumulative and exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions or to remove prohibited conditions or to remove prohibited building, structures or improvements nor prevent the enforcement correction or removal thereof. In addition to the other remedies provided herein, any adjacent or neighboring property owner who shall be especially damaged by the violation of any provision of these Zoning Regulations, may institute, in addition to the other remedies provided by law, injunction, mandamus, abatement or any other appropriate action, proceedings to prevent or abate or remove such unlawful erection, construction, reconstruction alteration, maintenance or use.~~

VIOLETIONS, PENALTIES AND ADDITIONAL REMEDIES

Sec. 2201 It is unlawful to erect, construct, reconstruct, alter, place, maintain any structure or use any land or structure in any zoning district in violation of any provision of this Ordinance. Any person, as defined, herein, violating or causing the violation of any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine or by imprisonment in the County jail or by both fine and imprisonment as stipulated within A.R.S. §11-808-C. Each and every day during which the illegal erection, construction, reconstruction, alteration, placement, maintenance, or use continues is a separate offense.

Sec. 2202 Additional Remedies: If any structure is or is proposed to be erected, constructed, reconstructed, altered, placed, maintained, or used or is proposed to be used in violation of this Ordinance, the Board, the County Attorney, the Planning Director, Zoning Inspector, or any adjacent or neighboring property owner who is specifically damaged by the violation, may in addition to the other remedies provided by law, take appropriate action or proceedings to prevent or abate or remove the unlawful erection, construction, reconstruction, alteration, placement, maintenance or use.

Sec. 2203 ENFORCEMENT

Sec. 2203.1. *The Board of Supervisors shall appoint a county zoning inspector, and such deputy inspectors as may be required. The county zoning inspector shall be the Planning Director, or designated representative, if no appointment is made. A zoning enforcement officer shall investigate, and report on all notices of zoning violations.*

Sec. 2203.2. *It shall be unlawful, and considered a public nuisance per se, included but limited to, to make use of any lot, parcel, or piece of property in such a way as to conflict with the provisions of this Ordinance. Likewise, it shall be in violation of this Zoning Ordinance to erect, construct, reconstruct, alter or use a building or any other structure which does not conform to the criteria set forth in this Ordinance. The Board of Supervisors, Planning Director, County Attorney, County Sheriff, Clerk of the Board, and all officials charged with the issuance of licenses or permits shall enforce the provisions of this Ordinance. Any permit, certificate, or license issued in conflict with the provisions of this Ordinance shall be void. To provide for the enforcement of this Zoning Ordinance, the County may withhold all Building Permits and Zoning Permits for properties on which a use of the property, building or any other structure exists which does not meet the standards of this Ordinance.*

Sec. 2204 HEARING OFFICER

The Board of Supervisors shall appoint a hearing officer to hear and determine zoning violations. The hearing officer may be an employee of the County and shall serve at the discretion of the Board of Supervisors.

Sec. 2205 ZONING ENFORCEMENT OFFICER

Sec. 2205.1. *The zoning enforcement officer shall review all reported or known violations of this Ordinance. Upon receiving a potential zoning violation, the zoning enforcement officer shall inspect the site of the alleged violation. During an inspection, the enforcement officer shall take careful and comprehensive notes as to condition and existing uses of the subject property, location, property owner and address, and specific section(s) of the County Zoning Ordinance corresponding to the alleged violation.*

Sec. 2205.2. *Should the zoning enforcement officer determine that a violation is occurring on the subject property, he/she shall serve notice to the property owner/alleged violator of the ordinance. The notice of violation shall cite the nature of the violation, the section of the County Zoning Ordinance violated, information on possible penalties if violation has not ceased, steps necessary to bring the subject property into compliance with the zoning regulations, and a reasonable time frame in which all necessary actions should be completed.*

Sec. 2205.3. *Reinspection shall occur after the given deadline. If the violation still exists at this time, a second notice shall be given to the property owner/alleged violator. The second notice of violation shall set a final deadline for compliance not to exceed two (2) weeks. If the zoning enforcement officer is convinced an attempt is being made in the correction of the violation, an extension not to exceed thirty (30) days may be granted.*

Sec. 2205.4. *If the violations are not resolved within the time specified in the second notice, or by the deadline of any extension, a citation shall be issued for each specific section of the Zoning Ordinance which has been violated. The citation shall be personally served at least seventeen (17) calendar days prior to the hearing on the alleged violator by the zoning enforcement officer. If the zoning enforcement officer is unable to personally serve the citation, the citation may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure.*

Sec. 2205.5. *Violations for which citation are issued shall be scheduled for a hearing before the Greenlee County hearing officer. If a citation is served upon an alleged violator other than by personal service, i.e. Certified Mail with return receipt, the hearing shall be set for a date no sooner than thirty (30) days from the date the Certified Mail was mailed. A notification of the specific time and date by which the alleged violator must appear at the hearing office to submit a plea shall be enclosed with the citation.*

Sec. 2206 HEARING OFFICER PROCEDURE

Sec. 2206.1. COMMENCEMENT OF ENFORCEMENT ACTION

Every action or proceeding brought before the hearing officer for a violation of the Greenlee County Zoning Ordinance shall be commenced by the mailing/delivery of a zoning violation notice by the zoning enforcement officer. 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 or reference to the applicable section of the Zoning Ordinance pertaining to the violation. Upon appearance, it shall be the responsibility of the alleged violator or their attorney to notify the hearing officer of an incorrect address or any different address than what is set forth on the zoning citation.

Sec. 2206.2 ANSWER - BY ADMISSION

The alleged violator or their attorney shall appear at the hearing office by the date and time specified in the notice accompanying the zoning citation, and may admit responsibility by appearing in person, or by mailing to the hearing office an appearance form provided by the hearing officer or in lieu of such form, a short statement signed by the alleged violator or their attorney admitting the allegations of the notice. Once a formal admission of responsibility is received by the hearing office, the hearing officer shall set a time and place for the determination of the penalty for the violation. At the hearing officer's meeting, both the alleged violator and zoning enforcement officer shall be given an opportunity to state their position on the amount of the penalty to be imposed by the hearing officer. Without an extension, which may be granted by the hearing officer in extraordinary circumstances, the alleged violator shall correct the zoning violation within thirty (30) days from the date of the hearing officer's proceedings.

Sec. 2206.3 ANSWER - BY DENIAL

The alleged violator or their attorney shall appear at the hearing office by the date specified in the notice accompanying the zoning citation and may deny responsibility by appearing in person or by mailing to the hearing officer an appearance form provided by the hearing officer or in lieu of such form, a denial signed by the alleged violator or their attorney. Once a formal denial is received by the hearing officer, the hearing officer shall schedule the matter for hearing and notify the alleged violator or their attorney of the date, time and place for the hearing.

Sec. 2206.4. COUNSEL

After the submittal of formal denial, the hearing officer shall promptly notify the alleged violator of their right to be represented by counsel. The alleged violator must notify the hearing officer in writing at least ten (10) calendar days prior to the hearing date of their choice to be represented by counsel.

Sec. 2206.5. FAILURE TO APPEAR

If the alleged violator fails to appear by the date and time specified in the notice accompanying the zoning citation, the allegations filed against the alleged violator shall be deemed admitted, and the hearing officer shall enter default judgment for the County and impose a penalty subject to Section Sec. 2206.3.4. of this Ordinance. The County need not be represented by counsel at the hearing officer's meeting. Should the County elect to secure counsel, the County must, in writing, notify the hearing officer and the alleged violator at least ten (10) days prior to the hearing of the County's decision to be represented by counsel.

Within ten (10) calendar days prior to the hearing, both parties shall produce a list to the opposing party of any exhibits or witnesses to be used at the hearing. Exhibits should be filed at the hearing office ten (10) calendar days prior to the hearing and are available to be examined by the other party during this ten (10) day time period. Failure to comply with this provision may result, in the hearing officer's discretion, in the granting of a continuance to permit such inspection or denial of the admission of the evidence.

Sec. 2206.6. HEARING OFFICER MEETING

- A. The order of the hearing officer proceeding shall be as follows:**
- 1. The hearing officer shall call the case and briefly describe the procedures to be followed.**
 - 2. County's opening statement.**
 - 3. Testimony of the County's witnesses, with cross examination.**
 - 4. Respondent's opening statement.**
 - 5. Testimony of the respondent's witnesses, with cross exam.**
 - 6. Cross examination of witnesses shall be strictly limited to subjects or evidence elicited during direct testimony.**
 - 7. County rebuttal.**
 - 8. Respondent's rebuttal**
 - 9. Closing statement of the parties or their counsel.**
 - 10. Ruling by the hearing officer. At the conclusion of the hearing, the hearing officer shall determine whether a zoning violation exists and, if a violation is found to exist, the hearing officer may impose civil penalties in accordance with the Zoning Ordinance.**
- B. At the discretion of the hearing officer, a hearing may be continued for a period not exceeding sixty (60) days if it appears that the interests of justice so require by giving notice to both parties, in writing, of the new hearing date.**
- C. The hearing officer may question witnesses or representatives of either party.**
- D. The Arizona Rules of evidence shall not apply at a hearing before a hearing officer. Any relevant evidence offered may be admitted.**
- E. Audio recordings of the hearing shall be made and kept on record at the hearing office for a period of one (1) year. In addition, a record of the proceedings may be made by a court reporter if requested by either party at that party's expense.**
- F. If the alleged violator fails to appear at the time set for the hearing, the alleged violator shall be found to be in default, the statement of responsibility shall be deemed admitted, and the hearing officer shall enter finding for the County and impose civil sanctions, and report such judgment to the zoning enforcement officer.**
- G. At any time, the hearing officer may set aside a finding entered upon a default if it is deemed by the hearing officer that the alleged violator was not served a citation, or for any other reason where necessary to prevent an injustice.**
- H. If no witness for the County, excluding the alleged violator, appears at the set time for the hearing, the hearing officer shall dismiss the citation unless the hearing office, for good cause shown, continues the hearing to another date.**

Sec. 2206.7. FINDING OF RESPONSIBILITY/CIVIL SANCTIONS

- A. If the alleged violator, after the hearing, is found responsible for the initial zoning violation, the hearing officer shall enter finding for the County and impose a civil sanction not to exceed the equivalent of a maximum fine for a Class 2 Misdemeanor for each violation. Individuals determined by the hearing officer to be violating any additional provision of this Ordinance shall be responsible of a zoning violation which is punishable by a civil sanction not to exceed the equivalent of a maximum fine for a Class 2 misdemeanor for each violation pursuant to A.R.S. §11-815.**
- B. The hearing officer shall levy a fine reflecting a penalty for the initial violation(s). The hearing officer has the option of suspending the fine or any portion of the fine should extenuating circumstances be found.**
- C. The judgment shall include a mandatory compliance date and a non-compliance daily penalty schedule to accrue with the fine, should the violation not be abated by the compliance date.**
- D. The hearing officer may attach a penalty for "recurrence" to a parcel, for a maximum of two (2) years from the hearing date. Said recurrence penalty may be levied if a violation of the same section of the Ordinance, as addressed in the hearing officer proceedings, occurs within the specified**

time period. In the event of a charged recurrence, a recall notice shall be served and the Respondent shall be scheduled to appear at the earliest possible hearing date to rebut the reoccurrence allegation and fine before the recurrence violation and violation fee become binding.

E. The following guidelines shall be utilized when assessing penalties:

USE TYPE	Agricultural/Residential	Commercial/Industrial
MINIMUM PENALTY		
<i>Initial</i>	<i>\$ 100</i>	<i>\$ 300</i>
<i>Non-Compliance</i>	<i>\$ 200</i>	<i>\$ 600</i>
<i>Daily</i>	<i>\$ 20</i>	<i>\$ 60</i>
<i>Recurrence</i>	<i>\$ 300</i>	<i>\$ 500</i>
MAXIMUM Cumulative Amount of Daily Penalty	\$1500	\$3000

NOTE: A Maximum penalty of \$750 per day per violation is allowed in accordance with the limitation of a Class 2 Misdemeanor (A.R.S. §11-808) and this code and is subject to change accordingly.

F. Should the daily penalty balance exceed \$1500 for Agricultural or Residential use or \$3000 for Commercial or Industrial use, the matter shall be forwarded to the County Attorney's Office for further legal action.

G. The alleged violator, if found responsible for the zoning violation and penalized with a civil sanction, shall not be relieved from the responsibility of correcting any prohibited condition. The defendant shall correct the zoning violation within thirty (30) days from the date of the hearing.

Sec. 2207. APPEAL TO THE GREENLEE COUNTY SUPERIOR COURT

Sec. 2207.1. Any party may appeal the final finding of the hearing officer to the Greenlee County Superior Court. A written Notice of Appeal shall be filed with the hearing officer within seven (7) calendar days after the hearing officer's finding.

Sec. 2207.2. The Notice of Appeal shall identify the finding appealed from. It shall be signed by the appellant or the appellant's counsel, and shall contain the names, addresses, and telephone numbers of all parties and their attorneys. When a party appeals, the hearing officer shall send a copy of the notice of appeal to the other party or his attorney.

Sec. 2207.3. Appeals shall be limited to the record of the proceeding before the hearing officer. No new evidence may be introduced. The record of the proceedings shall include all materials in the hearing officer's file, all evidence admitted at the hearing, and the official recording of the hearing.

Sec. 2207.4. Appellant shall have five (5) days from the date of Notice of Appeal to submit a memorandum stating the party's position. The memorandum shall be submitted to the Hearing Office and shall not exceed five (5) pages in length. The other party shall then have five (5) days after receipt of appellant's memorandum to submit a response.

Sec. 2207.5. Upon receiving the notice of appeal the hearing officer shall within thirty (30) days prepare and transmit the record and schedule the appeal with the Greenlee County Superior Court.

Sec. 2207.6. The parties may stipulate that the appeal may be heard on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed by the parties within fifteen (15) days after the notice of appeal.

Sec. 2207.7. After consideration of the merits of an appeal, the Superior Court may:

- a) Affirm the action of the hearing officer;**
- b) If an abuse of discretion is found, affirm in part and reverse in part and, if necessary, remand for further proceedings; or,**

c) If an abuse of discretion is found, reverse the action of the hearing officer and, if necessary, remand for further proceedings.

Sec. 2208 RECALL

Sec. 2208.1. Recall of a case may occur when the conditions and/or compliance time frame have not been met by the Respondent. The hearing officer case is considered to be an open case until complete compliance has been reached as outlined in the hearing officer judgment, including daily non-compliance and recurrence.

Sec. 2208.2. In the event that there is a penalty for recurrence, and if the term of the recurrence penalty has not expired, a recall notice shall be completed in person, by Certified Mail, or alternate methods of service as prescribed in the Arizona Rules of Civil Procedure not less than 14 days prior to the hearing date. If expired, a new Notice of Violation shall be completed in person, by Certified Mail, or alternate methods of service as prescribed in the Arizona Rules of Civil Procedure not less than 14 days prior to the hearing date.

ARTICLE 23

Validity

Sec. 2301 Severability

The various parts of these Zoning Regulations are hereby declared to be severable. If any article, section, subsection, sentence, clause, phrase, or word of these Zoning Regulations is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of these Zoning Regulations.

Sec. 2302 Repeal of Conflicting Regulations

2302.1 This Zoning Ordinance and all amendments hereto shall be consistent with and subject to the regulations and provisions of the Floodplain Regulations of Greenlee County.

ARTICLE 26

REMOVAL OF PUBLIC NUISANCE

Sec. 2601 Duty to Remove. The Owner, Lessee or Occupant of real property shall remove or abate a Public Nuisance located thereon within 30 calendar days after being served with a Notice to Abate as provided herein.

Sec. 2602 Notice to Abate. The Notice to Abate shall be served by the Planning Department, the Health Department or any County Department with jurisdiction over that condition on behalf of the Board not less than 30 days before the date for compliance and shall include the estimated cost of removal if the Owner, Lessee or Occupant does not comply. The estimated cost may be provided by a qualified contractor or may be a good faith estimate by the department initiating the Notice of Abatement.

Sec. 2603 Service of Notice to Abate. The Notice to Abate shall either be personally served or sent by certified mail to the Owner, Lessee or Occupant at his or her last known address, or the address to which the tax bill for the property was last mailed. If the Owner does not reside on the property, a duplicate notice may be sent to the Owner at his or her last known address.

Sec. 2604 Appeal of Notice to Abate. Any person receiving a Notice to Abate may appeal to the Board as follows:

1. Notice of Appeal. A written Notice of Appeal shall be filed with the Clerk of the Board within 15 days after the Notice to Abate was personally served or actually received by mail (as evidenced

by the certified mail receipt).

2. Contents of Notice of Appeal. *The Notice of Appeal shall state in reasonable detail why the appellant should not be required to comply with the Notice to Abate.*

3. Hearing on Appeal. *Upon receipt of the Notice of Appeal, the Board shall place the matter on the agenda for its next regular meeting. The department, which initiated the Notice to Abate, shall appear to present evidence of the existence of the Public Nuisance. The appellant may present evidence controverting the existence of the Public Nuisance. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Board shall hear and decide the appeal, and its decision shall be final.*

4. Extension of Time for Compliance. *If the Board's decision is adverse to the appellant, the date of compliance set forth in the Notice to Abate shall be extended by the number of days elapsing between the filing of the Notice of Appeal and the rendering of the Board's decision, unless the Board decides to extend this date of compliance.*

Sec. 2605 Removal by Board.

If the Owner, Lessee or Occupant fails to remove or otherwise abate the Public Nuisance within 30 calendar days (or such extension as may be granted in writing by the Board or the County Attorney), the Board may, at the expense of the Owner, Lessee or Occupant, remove or abate the Public Nuisance or cause it to be removed or abated; provided, however, that if such removal or abatement is not undertaken within 180 days after the right to do so first accrues, a new Notice to Abate shall be served as provided in paragraph Sec. 2603.

1. Cost of Removal. *The cost of removal or abatement shall not exceed the estimate set forth in the Notice to Abate. Before undertaking the actual removal or abatement, the department which initiated the Notice to Abate shall attempt to obtain at least three written estimates from qualified contractors (if available locally) and shall accept the lowest such estimate. Alternatively, the removal or abatement of the nuisance may be performed by Greenlee County personnel and the cost shall be deemed to be the same as the lowest estimate obtained from a qualified contractor, if applicable.*

2. Assessment. *Upon removal or abatement of the Public Nuisance, the actual cost of removal or abatement shall be an Assessment against the Real Property on which the Public Nuisance was located. The form of the Assessment (setting forth the facts supporting it, as well as the amount) shall be approved by the Board and signed by the Chairman.*

3. Notice of Assessment. *A Notice of Assessment shall be served in the same manner as the Notice to Abate. The Notice of Assessment may be appealed in the same manner as the Notice to Abate.*

4. Recordation of Assessment. *If the Owner, Lessee or Occupant fails to pay the Assessment within 30 calendar days after receipt of the Notice to Abate (or any extension as may be granted in writing by the Board or County Attorney), the Assessment shall be delinquent and may be recorded in the office of the Greenlee County Recorder. The Assessment shall be a lien against the Real Property from and after the date of recordation and shall accrue interest at the statutory judgment rate until paid. The lien of the Assessment shall be subject and inferior to the lien of general taxes and all prior recorded mortgages and encumbrances.*

A. Foreclosure. *The Board may, but shall not be obligated to, bring an action to enforce the Assessment lien in the Greenlee County Superior Court at any time after the recordation of the Assessment. The recorded Assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.*

B. No Bar to Subsequent Assessments. *A prior Assessment under this Ordinance is no bar to a subsequent Assessment, and any number of liens on the same Real Property may be enforced in the same action.*

Sec. 2606 Placing Rubbish, Trash, Filth or Debris on Property of Another with Associated

Penalty and Assessment

1. Placing Rubbish, Trash, Filth or Debris on the property of another is prohibited. Any person who places rubbish, trash, filth or debris on any real property not owned by or under the control of said person is guilty of a Class 1 misdemeanor.

2. Liability of Costs. In addition to any fine, which may be imposed pursuant to this section, the person shall be liable for all costs, which may be assessed for the removal of the rubbish, trash, filth or debris pursuant to this ordinance.

Sec. 2607 Non-Exclusive Remedy

The remedies provided for in this Ordinance shall be in addition to any and all other remedies, civil or criminal, available to Greenlee County pursuant to statute or common law, specifically including those set forth in A.R.S. §13-2908, §36-602 and §49-143.