

## Appendix A

### Board of Appeals

#### Section A101. General

**A101.1. Scope.** A Board of Appeals is hereby established within the jurisdiction of the Fry Fire District for the purpose of hearing applications for modification of the requirements of the International Fire Code, as adopted by the Fry Fire District, pursuant to provisions of Section 108 of said International Fire Code.

**A.101.2. Membership.** The membership of the Board of Appeals shall consist of the five members of the Fry Fire District Board. Members shall serve without remuneration or compensation. The Chair of the Fire District Board shall act as Chair and presiding officer of the Board of Appeals, unless another Board member is so designated by the Board.

**A.101.3. Quorum.** Three members of the Board of Appeals shall constitute a quorum. In varying the application of any provisions of this code or in modifying an order of the fire code official, affirmative votes of a majority of those present shall be required.

**A.101.4. Secretary of the Board.** The District's Administrative Manager shall act as secretary of the Board of Appeals and shall keep a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member, the absence of a member and any failure of a member to vote.

**A.101.5. Legal counsel.** The jurisdiction shall furnish legal counsel to the Board of Appeals, to provide members with general legal advice concerning the matters before them for consideration. Members shall be represented by legal counsel at the jurisdiction's expense in all matters arising from service within the scope of their duties, however counsel shall only attend meetings or hearings when expressly so requested by the Board.

**A.101.6. Meetings.** The Board of Appeals shall meet as necessary to hear appeals pursuant to the Rules of Procedure established in Section A.102, and shall meet at such other times as to be determined by the Chairman. All hearings and other meetings of the Board of Appeals shall be noticed pursuant to A.R.S. § 38-431, *et seq.*, and shall be held in open session, except that, where authorized by A.R.S. § 38-431.03, and with required notice, the Board may elect to discuss some matters in executive session.

**A.101.7. Conflict of interest.** Any member of the Board of Appeals who has a material or financial interest in any matter before the Board shall declare such interest and refrain from participating in discussions, deliberations, or voting on any such matter.

**A.101.8. Decisions.** Every decision of the Fire Chief with respect to any initial appeal, and of the Board of Appeals with respect to any further appeal is a public record pursuant to A.R.S. § 39-121 and shall be promptly filed in writing in the office of the fire code official and shall be open to public inspection during regular business hours.

**A.101.9. Procedures.** The Board of Appeals shall operate in accordance with rules of procedure established in Section A102.

### **Section A.102. Rules of Procedure**

**A.102.1. Scope.** Any property owner or designated representative thereof who is cited for a civil violation of the International Fire Code as adopted by the Fry Fire District, other than a vehicular offense or an offense deemed to pose an immediate hazard to life or property, may appeal that citation, initially to the Fire Chief, and, if dissatisfied with the result, thereafter to the Fire District Appeals Board, based on a claim that: (1) the intent of the Fire Code or the rules legally adopted thereunder have been incorrectly interpreted, (2) the provisions of the code do not fully apply, (3) an equivalent alternative method of protection or safety is proposed, or (4) relief should be granted based upon a claim of undue hardship. Appeals must be filed in writing and must be legible, and must state the grounds and factual basis for the appeal, but no particular form is required. Appellants must, however, comply with the rules of procedure listed below, and must strictly comply with deadlines contained therein. Failure to meet any of those deadlines will result in denial of the appeal.

**A.102.2. Service of process.** Service or filing of any documents under these rules is satisfied by first class mailing, unless otherwise stated, and is complete upon mailing, with postmark to serve as proof of timeliness. Service on the fire code official, the Fire Chief or the Board of Appeals shall be mailed to 4817 Apache Street, Sierra Vista, AZ 85650. Service on the appellant shall be mailed to the address provided by appellant pursuant to Section A.102.3, below. Where a filing deadline under these rules falls on a Saturday, Sunday or holiday, the deadline shall be extended to the next day that is not a Saturday, Sunday or holiday.

**A.102.3. Initial appeal.** Within ten (10) calendar days of receipt of a citation from the fire code official alleging a violation of the International Fire Code, the owner of said property, or his or her representative, may file an initial appeal in writing with the Fire Chief or his authorized representative, on grounds enumerated in Section A.102.1, above, along with any supporting documentation that the appellant wishes the Board to consider. Said appeal shall include a mailing address for receipt of all future correspondence concerning the citation and any appeal thereof, and it shall be the responsibility of the appellant to thereafter update that information.

**A.102.4. Initial decision.** Within ten (10) calendar days of receipt of the initial appeal, the Fire Chief or his authorized representative shall issue a written determination either granting or denying the appeal, or modifying the sanction imposed for the violation

alleged. Unless the appeal is granted in full, that determination shall include notice to the appellant of the right to appeal that disposition to the Board of Appeals, together with a copy of Appendix A, Section 102 of the Fire Code. Said written decision may be served on the appellant personally or by certified mail, return receipt requested, and date of service shall be the actual date of receipt by appellant or appellant's representative.

**A.102.5. Appeal to the Board of Appeals.** If an initial appeal of a citation is not granted in full, the appellant may, within ten (10) calendar days of that disposition, lodge an appeal of that disposition, in writing, with the Fire District Board, sitting as a Board of Appeals, on grounds enumerated in Section A.102.1, above.

**A.102.6. Record on appeal.** Within ten (10) calendar days of filing of the appeal, the Fire Chief shall cause to be forwarded to the Board of Appeals and the appellant all relevant documents in his possession or control pertaining to the citation, including any additional supporting documentation which he relied upon in reaching his initial decision, with said records to be designated as the administrative record for the appeal.

**A.102.7. Scheduling of hearing.** The Board of Appeals shall commence a hearing on any appeal within twenty (20) calendar days of receipt of a written appeal of the Fire Chief's disposition of any initial appeal.

**A.102.8. Notice of hearing.** Written notice of the time, date and place of the hearing shall be mailed by the Fire Chief to the appellant at least seven (7) calendar days before the date of such hearing, at the address provided by the appellant in the initial appeal. Each hearing shall be noticed pursuant to A.R.S. § 38-431, *et seq.*, and shall be held in open session.

**A.102.9. Hearing.** Any hearing before the Board of Appeals shall be conducted in an informal manner, without adherence to the rules of evidence that are required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order, providing that the evidence supporting such decision or order is substantial, reliable and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceeding shall have the right to be represented by counsel, to submit evidence in open hearing and to conduct cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency. Objections to proffered evidence must be made in writing or orally at the time it is offered to the Board for acceptance or such objections shall be deemed waived.

**A.102.10. Recordation.** All testimony at the hearings shall be recorded manually or by mechanical device. Parties requesting a certified transcript of the hearing shall bear the costs. If all parties stipulate thereto in writing, the hearing may be conducted without oral testimony and, in such event, the Board shall adopt, reject, modify or originate all its decisions in public session.

**A.102.11. Copies of documents.** Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

**A.102.12. Judicial notice.** Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**A.102.13. Subpoenas.** The officer presiding at the hearing 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, pursuant to authority granted by A.R.S. § 12-2212. Subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. Notwithstanding the provisions of A.R.S. § 12-2212, no subpoenas, depositions or other discovery shall be permitted in contested cases except as provided by agency rule or this paragraph and paragraph A.102.14, below.

**A.102.14. Depositions.** On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. Pre-hearing depositions and subpoenas for the production of documents may be ordered by the officer presiding at the hearing, provided that the party seeking such discovery demonstrates that the party has reasonable need for the deposition testimony or materials being sought. All provisions of law compelling a person under subpoena to testify are applicable.

**A.102.15. Witness fees.** Fees for attendance of witnesses shall be the same as for a witness in the superior court of the state of Arizona, unless otherwise provided by law or agency rule.

**A.102.16. Decision.** The Board shall issue an order within twenty (20) calendar days from the conclusion of the hearing, either granting or denying the appeal, or modifying the sanction imposed for the violation, and shall send a copy thereof by registered mail, return receipt requested, to the appellant, at the address provided. Said written decision may be served on the appellant personally or by certified mail, return receipt requested, and date of service shall be the actual date of receipt by appellant or appellant's representative.

**A.102.17. Petition for reconsideration.** On written request filed within ten (10) calendar days from the date of the Board's order, either party may petition the Board for reconsideration of the terms of that order, on grounds of irregularity in proceedings that

served to deprive the moving party for a fair hearing, unfair accident or surprised which could not have been prevented by ordinary prudence, newly discovered material evidence which could not with reasonable diligence have been discovered and produced at hearing, excessive or insufficient damages, prejudicial error in admission or rejection of evidence, or verdict that is the result of passion or prejudice. The Board shall, within 20 days after the filing of said petition, file a written order granting, denying or modifying its prior. Said written order may be served on the appellant personally or by certified mail, return receipt requested, and date of service shall be the actual date of receipt by appellant or appellant's representative.

**A.102.18. Judicial review.** The findings and decision of the Board of Appeals entered pursuant to paragraphs A.102.16 and A.102.17 shall be final and shall be subject only to judicial review as provided in A.R.S. §§ 12-901 through 12-914.

**A.102.19. Finality of decision.** A decision of the Board of Appeals with respect to an appeal, or, where applicable, a decision of the Board on a petition for reconsideration, shall be deemed final and subject to enforcement forty (40) calendar days after a copy of the decision sought to be reviewed is served upon the party affected, unless judicial review is sought pursuant to A.R.S. § 12-901, *et seq.*

**A.102.20. Interest on monetary penalties.** Interest shall accrue on any civil monetary penalty that is imposed by decision of the Board of Appeals, at the judgment rate, from the date upon which said decision is deemed final under Section A.102.19 of these rules.

**A.102.21. Enforcement.** Any property owner within the jurisdiction of the Fry Fire District, or representative thereof, who is issued a citation for a violation of the International Fire Code and fails to seek administrative review of said citation pursuant to this Section within ten (10) calendar days of receipt of a copy of said citation, or who, after exhausting administrative remedies, remains subject to citation, shall be subject to enforcement measures for failure to comply with terms of that citation. Specifically, the Fire District may:

- A. Obtain a civil judgment in the amount of the monetary penalty imposed and thereafter enforce that judgment by garnishment of wages or attachment by lien of real or personal property and, thereafter, execution of said lien;
- B. Withhold deny, or revoke any operational or occupancy permit required for occupancy of affected premises or for operation of any business subject to regulation under the International fire Code at said location;
- C. Issue a stop work order or take an unsafe building abatement action, or other order for termination or removal of unlawful occupancy, as appropriate;
- D. Refer violations to other regulatory agencies for appropriate administrative action, including but not limited to the state Fire Marshal, state and local health departments, hazard abatement programs, business or professional

licensure agencies and/or programs, building and or zoning inspectors, or other appropriate regulatory agencies;

E. Seek other judicial injunctive relief, as appropriate.

**The following 2006 Fire Code provisions as adopted by the Fry Fire District must be modified to establish penalties. The following revisions are proposed:**

**109.3 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, may be cited civilly and fined up to \$750 for each violation of this code, subject to appeal rights provided in Appendix A, or, where the violation in question involves knowing and intentional violation of a provision of this fire code or of a directive of the fire code official concerning compliance with provisions of this fire code, and where the fire code official reasonably believes that said violation may constitute a crime under any applicable provision of the Arizona Revised Statutes, the violator may, at the sole discretion of the fire code official, be referred for criminal prosecution. A property owner or representative who is issued a civil citation for a violation of the fire code shall not thereafter be prosecuted criminally for that same violation, however each day that such a violation continues after due notice has been served shall be deemed a separate offense.

**111.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$250 nor more than \$750.

## **TIMELINE**

<b><u>Event</u></b>	<b><u>Response</u></b>	<b><u>Time</u></b>
Complaint	Investigation	Within five working days
Verification	Require compliance	Within 14 to 30 days
Re-inspection	Confirm compliance, Cite for violation, or Grant extension for compliance	Another 14 to 30 days
Subsequent re-inspections (discretionary)	May be granted in lieu of citation if evidence of progress toward compliance and owner agrees to pay \$30 re-inspection fee to cover added costs	Another 5 to 30 days
Pre-citation letter	Last warning that if compliance not achieved within 10 days, a citation shall issue	10 days
Issue citation	Initial appeal to Fire Chief	Within 10 days of receipt of citation
Initial Decision of F.C.	Appeal to Board of Appeals	Within 10 days of receipt of Initial Decision
Receipt of appeal to Board of Appeals	File/serve appellate record	Within 10 days of receipt of appeal
Set hearing date	notify appellant	Hearing to commence within 20 days of receipt of appeal; appellant to be notified at least 7 days in advance
Hearing	Decision on appeal	Issue within 20 days from date of hearing

Decision of Board	Petition for reconsideration (optional)	Must be filed within 10 days of decision
Reconsideration	Decision on petition	Issue within 20 days from date of receipt of petition for reconsideration
Judicial appeal	Appellant may appeal To Superior Court	Within 35 days after decision sought to be reviewed is served on party affected
Enforcement	If no judicial appeal	Forty (40) days after decision sought to be reviewed is served on party affected