T. C. A. § 6-54-1001

§ 6-54-1001. Office of administrative hearing officer; creation by ordinance; building and property maintenance code violations

(a) Municipalities are authorized to create, by ordinance, the office of administrative hearing officer to hear building and property maintenance code violations.

(b) Such authorizing ordinance must, at minimum, contain:

(1) Reference to the municipal code sections subject to administrative jurisdiction; and

(2) The number of administrative hearing officer positions created.

(c) Two (2) or more municipalities may enter into an interlocal agreement to employ one (1) or more administrative hearing officers if so referenced in the adopting ordinance.

(d) No provision in this part diminishes or terminates any existing municipal power or authority.

(e) For purposes of this part, "municipality" means any incorporated town or city, or metropolitan form of government.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010; 2017 Pub.Acts, c. 489, § 1, eff. June 6, 2017.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1002

§ 6-54-1002. Jurisdiction

(a) The administrative body has jurisdiction to hear cases involving violations of municipal ordinances regulating building and property maintenance, including:

(1) Locally adopted building codes;

(2) Locally adopted residential codes;

(3) Locally adopted plumbing codes;

(4) Locally adopted electrical codes;

(5) Locally adopted gas codes;

(6) Locally adopted mechanical codes;

(7) Locally adopted energy codes;

(8) Locally adopted property maintenance codes;

(9) Locally adopted zoning codes; and

(10) Ordinances regulating any subject matter commonly found in the codes mentioned in subdivisions (a)(1)--(9).

(b) Administrative hearing officers are not authorized to hear violations of codes adopted by the state fire marshal pursuant to § 68-120-101(a) enforced by a deputy building inspector pursuant to § 68-120-101(f).

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010; 2017 Pub.Acts, c. 489, § 2, eff. June 6, 2017.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1003

§ 6-54-1003. Ex parte communications

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative hearing officer presiding over a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative hearing officer may communicate with municipal employees or officials regarding a matter pending before the administrative body or may receive aid from staff assistants, members of the staff of the city attorney or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative hearing officer would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative hearing officer without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative hearing officer in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative hearing officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) business days after notice of the communication.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1004

§ 6-54-1004. Participation; representation

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel
or, unless prohibited by any provision of law, other representative.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1005

§ 6-54-1005. Pre-hearing conference

(a)(1) In any action set for hearing, the administrative hearing officer, upon the administrative hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative hearing officer for a conference to consider:

(A) The simplification of issues;

(B) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(C) The limitation of the number of witnesses; and

(D) Such other matters as may aid in the disposition of the action.

(2) The administrative hearing officer shall make an order that recites the action taken at the conference, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(b) Upon reasonable notice to all parties, the administrative hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the administrative hearing officer sitting alone, to consider argument or evidence, or both, on any question of law.

(c) In the discretion of the administrative hearing officer, all or part of the pre-hearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(d) If a pre-hearing conference is not held, the administrative hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1006

§ 6-54-1006. Administrative hearing officer; appointment; term; license requirements

(a) Each administrative hearing officer shall be appointed by the local governing body for a four-year term and serve at the pleasure of the appointing governing body. Such administrative hearing officer may be reappointed.

(b) An administrative hearing officer shall be one (1) of the following:

(1) Licensed building inspector;

(2) Licensed plumbing inspector;

(3) Licensed electrical inspector;

(4) Licensed attorney;

(5) Licensed architect; or

(6) Licensed engineer.

(c) A municipality may also contract with the administrative procedures division, office of the Tennessee secretary of state to employ an administrative law judge on a temporary basis to serve as an administrative hearing officer. Such administrative law judge shall not be subject to the requirements of § 6-54-1007 (a) and (b).

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1007

§ 6-54-1007. Administrative hearing officers; training; continuing education

(a) Each person appointed to serve as an administrative hearing officer shall, within the six-month period immediately following the date of such appointment, participate in a program of training conducted by the University of Tennessee's municipal technical advisory service, referred to in this part as MTAS. MTAS shall issue a certificate of participation to each person whose attendance is satisfactory. The curricula for the initial training shall be developed by MTAS with input from the administrative procedures division, office of the Tennessee secretary of state. MTAS shall offer this program of training no less than twice per calendar year.

(b) Each person actively serving as an administrative hearing officer shall complete six (6) hours of continuing education every calendar year. MTAS shall develop the continuing education curricula and offer that curricula for credit no less than twice per calendar year. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this part. No continuing education hours from one (1) calendar year may be carried over to a subsequent calendar year.

(c) MTAS has the authority to set and enact appropriate fees for the requirements of this section. A municipality shall bear the cost of the fees for administrative hearing officers serving their jurisdiction.

(d) Costs pursuant to this section shall be offset by fees enacted.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T C. A. § 6-54-1008

§ 6-54-1008. Citations; notice requirements; signature; transfer to hearing officer

(a) Upon the issuance of a citation for violation of a municipal ordinance referenced in the municipality's administrative
hearing ordinance, the issuing officer shall provide written notice of:

(1) A short and plain statement of the matters asserted. If the issuing officer is unable to state the matters in detail at the time the citation is served, the initial notice may be limited to a statement of the issues involved and the ordinance violations alleged. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) business days prior to the time set for the hearing;

(2) A short and plain description of the municipality's administrative hearing process including references to state and local statutory authority;

(3) Contact information for the municipality's administrative hearing office; and

(4) Time frame in which the hearing officer will review the citation and determine the fine and remedial period, if any.

(b) Citations issued for violations of ordinances referenced in the municipality's administrative hearing ordinance shall be signed by the alleged violator at the time of issuance. If an alleged violator refuses to sign, the issuing officer shall note the refusal and attest to the alleged violator's receipt of the citation. An alleged violator's signature on a citation is not admission of guilt.

(c) Citations issued upon absentee property owners may be served via certified mail sent to the last known address of the recorded owner of the property.

(d) Citations issued for violations of ordinances referenced in the municipality's administrative hearing ordinance shall be
transmitted to an administrative hearing officer within two (2) business days of issuance.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1009

§ 6-54-1009. Fines; remedial period; hearing; notice

(a) Upon receipt of a citation issued pursuant to § 6-54-1008, an administrative hearing officer shall, within seven (7) business days of receipt, review the appropriateness of an alleged violation. Upon determining that a violation does exist, the hearing officer has the authority to levy a fine upon the alleged violator in accordance with this section. Any fine levied by a hearing officer must be reasonable based upon the totality of the circumstances.

(1) For violations occurring upon residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars ($500) per violation. For purposes of this part, "residential property" means a single family dwelling principally used as the property owner's primary residence and the real property upon which it sits.

(2) For violations occurring upon non-residential property a hearing officer has the authority to levy a fine upon the violator not to exceed five hundred dollars ($500) per violation per day. For purposes of this part, "non-residential property" means all real property, structures, buildings and dwellings that are not residential property.

(b) If a fine is levied pursuant to subsection (a), the hearing officer shall set a reasonable period of time to allow the alleged violator to remedy the violation alleged in the citation before the fine is imposed. The remedial period shall be no less than ten (10) nor greater than one hundred twenty (120) calendar days, except where failure to remedy the alleged violation in less than ten (10) calendar days would pose an imminent threat to the health, safety or welfare of persons or property in the adjacent area.

(c) Upon the levy of a fine pursuant to subsection (a), the hearing officer shall within seven (7) business days, provide via certified mail notice to the alleged violator of:

(1) The fine and remedial period established pursuant to subsections (a) and (b);

(2) A statement of the time, place, nature of the hearing, and the right to be represented by counsel; and

(3) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.

(d) The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. To confirm the hearing, the alleged violator must make a written request for the hearing to the hearing officer within seven (7) business days of receipt of the notice required in subsection (c).

(e) If an alleged violator demonstrates to the issuing officer's satisfaction that the allegations contained in the citation have been remedied to the issuing officer's satisfaction, the fine levied pursuant to subsection (a) shall not be imposed or if already imposed cease; and the hearing date, if the hearing has not yet occurred, shall be cancelled.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1010

§ 6-54-1010. Default

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative hearing officer may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(b) If the proceedings are conducted without the participation of the party in default, the administrative hearing officer shall include in the final order a written notice of default and a written statement of the grounds for the default.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1011

§ 6-54-1011. Intervention

(a) The administrative hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) business days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any law; and

(3) The administrative hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) If a petitioner qualifies for intervention, the administrative hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's participation so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their participation in the proceedings.

(c) The administrative hearing officer, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative hearing officer may modify the order at any time, stating the reasons for the modification. The administrative hearing officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1012

§ 6-54-1012. Hearings; full disclosure of facts; public observation

(a) The administrative hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

(c) In the discretion of the administrative hearing officer and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(d) The hearing shall be open to public observation pursuant to title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1013

§ 6-54-1013. Evidence; affidavits; notice

(a) In administrative hearings:

(1) The administrative hearing officer shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrative hearing officer shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in the officer's judgment is irrelevant, immaterial or unduly repetitious;

(2) At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subsection (b). Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (a)(2), the affidavit shall not be admitted into evidence. "Delivery", for purposes of this section, means actual receipt;

(3) The administrative hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(4) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(5)(A) Official notice may be taken of:

(i) Any fact that could be judicially noticed in the courts of this state;

(ii) The record of other proceedings before the agency; or

(iii) Technical or scientific matters within the administrative hearing officer's specialized knowledge; and

(B) Parties must be notified before or during the hearing, or before the issuance of any final order that is based in whole or in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

(b) The notice referred to in subdivision (a)(2) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1014

§ 6-54-1014. Orders; findings of fact

(a) An administrative hearing officer shall render a final order in all cases brought before the officer's body.

(b) A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

(c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(d) If an individual serving or designated to serve as an administrative hearing officer becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(e) The administrative hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(f) A final order rendered pursuant to subsection (a) shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.

(g) The administrative hearing officer shall cause copies of the final order under subsection (a) to be delivered to each party.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1015

§ 6-54-1015. Final order; effective date; compliance

(a) All final orders shall state when the order is entered and effective.

(b) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1016

§ 6-54-1016. Collection of fine

A municipality may collect a fine levied pursuant to this section by any legal means available to a municipality to collect any other fine, judgment or debt.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1017

§ 6-54-1017. Judicial review

(a) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

(b) Proceedings for judicial review of a final order are instituted by filing a petition for review in the chancery court in the county where the municipality lies. Such petition must be filed within sixty (60) calendar days after the entry of the final order that is the subject of the review.

(c) The filing of the petition for review does not itself stay enforcement of the final order. The reviewing court may order a stay on appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten
(10) business days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied.

(d) Within forty-five (45) calendar days after service of the petition, or within further time allowed by the court, the administrative hearing officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the administrative proceeding, the court may order that the additional evidence be taken before the administrative hearing officer upon conditions determined by the court. The administrative hearing officer may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the administrative hearing officer, except as otherwise provided in this chapter. The administrative hearing officer that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrative hearing officer, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the administrative hearing officer or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the administrative hearing officer;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the administrative hearing officer as to the weight of the evidence on questions of fact.

(i) No administrative hearing decision pursuant to a hearing shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.

T. C. A. § 6-54-1018

§ 6-54-1018. Judicial appeals

(a) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(b) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to title 24 shall become a part of the record.

(c) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

Credits

2010 Pub.Acts, c. 1128, § 1, eff. July 1, 2010.

Current through end of 2017 First Reg. Sess.