

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-2
TITLE: Zoning/Land Use and Code Enforcement Hearing Examiner's Department	ADOPTED: 09/05/90
	AMENDED: 01/04/95;11/23/04; 5/21/13; 04/02/19
	ORIGINATING DEPARTMENT: Hearing Examiner

PURPOSE/SCOPE:

The purpose of this Administrative Policy is to establish, staff, and provide for the administration of a Zoning/Land Use and Code Enforcement Hearing Examiner's Department. This administrative code may only be amended, revised, superseded or repealed by formal resolution of the Board of County Commissioners.

POLICY/PROCEDURE:

I. Position

The Board of County Commissioners (Board) hereby creates the Hearing Examiner Department and the positions of Chief Hearing Examiner and Deputy Hearing Examiner. Each Hearing Examiner shall have the powers and duties enumerated in the Lee County Land Development Code (LDC) and other applicable County ordinances. The Chief Hearing Examiner shall be hired solely and exclusively by the Board and shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by an absolute majority of the Board. The Deputy Hearing Examiner shall be hired by the Chief Hearing Examiner and shall be subject to all policies, rules and regulations of the Hearing Examiner Department, except as set out in the following paragraph and Section VI herein below.

Because of the judicial nature of the position, all Hearing Examiners shall report directly to the Board in regard to their decision making duties, and shall not be subject to the administration or supervision of the County Manager or the County Attorney. All Hearing Examiners and members of the department are hereby specifically exempted from the supervisory and employment provisions of Lee County Ordinance 82-37, as may be amended or replaced. This provision does not prohibit the Chief Hearing Examiner from electing to utilize all or a portion of the County's existing administrative, supervisory and employment provisions in the administration of the Hearing Examiner Department.

II. Qualifications

Each Hearing Examiner shall possess a minimum of 5 years of experience in the practice of Florida law relating to growth management statutes, local land use and zoning matters, comprehensive planning, code enforcement, judicial and administrative procedures, and knowledge of the rules of evidence. Each Hearing Examiner shall be licensed to practice law in Florida, and shall hold a law degree from an A.B.A. accredited law school. Lee County residency is required within 180 days of successful completion of the 6-month probationary period. Failure to comply with the residency requirement shall be grounds for termination.

III. Salary and Benefits

The positions of Chief and Deputy Hearing Examiner shall be full time positions. Salary for the Chief Hearing Examiner shall be determined by the Board and shall be reflected in an employment contract. Salary for the Deputy Hearing Examiner shall be within pay range HE-1, as established in the Lee County Classification and Pay Plan. Each position shall receive full benefits for Administration positions at pay range 23, or above, of the Lee County Classification and Pay Plan. No overtime pay shall be authorized for any Hearing Examiner.

Hearing Examiners pro tempore, if necessary, shall be contracted for by the Chief Hearing Examiner, subject to Board approval. All Hearing Examiners pro tempore shall be compensated at a rate not to exceed \$150.00 per hour with no benefits being paid for such position(s).

IV. Staff

The Hearing Examiner Department shall be adequately staffed to carry out any duties assigned or designated by the Board. The Chief Hearing Examiner, following consultation with, and the advice of, the Lee County Human Resources Department, shall have the right to create, reclassify, and fill positions for the Hearing Examiner Department, which are the equivalent of any position found in the Lee County Classification and Pay Plan, subject to the constraints of the budget of the Hearing Examiner Department.

V. General Administrative Duties

The Chief Hearing Examiner shall be responsible for the day-to-day administration and policy setting of the Hearing Examiner Department. Said administration includes overview of all Department personnel matters, the timely rendering of decisions and recommendations by the Hearing Examiners, and the distribution of cases and work load among the Hearing Examiners. The Chief Hearing Examiner shall also have all rights, benefits, privileges, and authority held by the County Manager with respect to the internal administration of the Hearing Examiner Department, but said rights and authority do not extend to influencing or compelling particular decisions by the Deputy Hearing Examiner in any land use, zoning or code enforcement case. The Chief Hearing Examiner shall consult, as necessary, with the Board and shall represent and act for the Hearing Examiner Department in connection with any County activities and functions.

VI. Hearing Examiner Independence in Decision Making

It is the intent of the Board that, following an initial training and familiarization period not to exceed 180 days, all the Lee County Hearing Examiners shall be of equivalent qualification with regard to hearing and deciding land use, zoning, and code enforcement cases, and shall be answerable only to the Board for their individual decisions.

In no event shall any Hearing Examiner knowingly attempt to influence a decision or interfere with the decision making duties of any other Hearing Examiner. Any such attempt shall be timely reported by the affected Hearing Examiner to the County Attorney's Office for investigation and, if found to have occurred, shall be grounds for immediate termination of the initiating Hearing Examiner. Failure by the affected Hearing Examiner to report such attempts may be cause for termination of both Hearing Examiners.

Nothing in this section shall prohibit general discussions of law or procedure by and between the Hearing Examiners, or their staff, regarding any pending or proposed cases or appeals.

All other improper or ex parte communication attempts to any Hearing Examiner shall be governed by the provisions of LDC Sections 2-191 and 34-52.