

ORDINANCE NO. 2017-07

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, AMENDING CHAPTERS 5 AND 15 OF THE PEORIA CITY CODE (1992) BY RENUMBERING SECTION 15-1 AS SECTION 5-1 PERTAINING TO MUNICIPAL COURT; PRESIDING JUDGE; APPOINTMENT OF JUDGES; TERMS; BY RENUMBERING SECTION 15-2 AS SECTION 5-2 PERTAINING TO MUNICIPAL COURT; REMOVAL OF MUNICIPAL JUDGES; BY AMENDING SECTION 15-3 AND RENUMBERING IT AS SECTION 5-3 PERTAINING TO MUNICIPAL COURT; APPOINTMENT OF ASSISTANT MUNICIPAL JUDGES, JUDGES PRO-TEMPORE, COURT ADMINISTRATOR, CIVIL HEARING OFFICER, AND OTHER COURT EMPLOYEES; BY AMENDING SECTION 15-4 AND RENUMBERING IT AS SECTION 5-4 PERTAINING TO MUNICIPAL COURT; JURIES; FEES AND MILEAGE; BY AMENDING SECTION 15-5 AND RENUMBERING IT AS SECTION 5-5 PERTAINING TO MUNICIPAL COURT; POWERS AND DUTIES; BY RENUMBERING SECTION 15-6 AS SECTION 5-6 PERTAINING TO CODE VIOLATIONS, CLASSIFICATIONS, CIVIL SANCTIONS; BY RENUMBERING SECTION 15-7 AS SECTION 5-7 PERTAINING TO MUNICIPAL COURT; COURT ENHANCEMENT FUND; BY REPEALING SECTION 15-8 IN ITS ENTIRETY PERTAINING TO JUDICIAL SELECTION ADVISORY BOARD ESTABLISHMENT; MEMBERSHIP; POWERS AND DUTIES; OPERATING PROCEDURES AND RENUMBERING IT AS RESERVED SECTION 5-8; BY RENUMBERING SECTION 15-9 AS RESERVED SECTION 5-9; BY RENUMBERING SECTIONS 15-10 THROUGH 15-11 AS RESERVED SECTIONS 5-10 THROUGH 5-11; BY RENUMBERING SECTION 15-12 AS SECTION 5-12 PERTAINING TO CIVIL HEARINGS; CITATION; SUFFICIENCY; AMENDMENT; BY RENUMBERING SECTION 15-13 AS SECTION 5-13 PERTAINING TO CIVIL HEARINGS; CITATION; SERVICE; BY AMENDING SECTION 15-14 AND RENUMBERING IT AS SECTION 5-14 PERTAINING TO CIVIL HEARINGS; PROCESS; CONTINUANCES; BY AMENDING SECTION 15-15 AND RENUMBERING IT AS

SECTION 5-15 PERTAINING TO CIVIL HEARINGS; DUTY TO RESPOND; BY RENUMBERING SECTION 15-16 AS SECTION 5-16 PERTAINING TO CIVIL HEARINGS; RULES OF PROCEDURES; BY RENUMBERING SECTION 15-17 AS SECTION 5-17 PERTAINING TO CIVIL HEARINGS; ORDER OF PROCEEDINGS; BY AMENDING SECTION 15-18 AND RENUMBERING IT AS SECTION 5-18 PERTAINING TO CIVIL HEARINGS; JUDGMENTS; BY RENUMBERING SECTION 15-19 AS SECTION 5-19 PERTAINING TO CIVIL HEARINGS; DEFAULT JUDGMENTS; BY RENUMBERING SECTION 15-20 AS SECTION 5-20 PERTAINING TO CIVIL HEARINGS; CONSOLIDATED CASES; BURDEN OF PROOF; BY RENUMBERING SECTION 15-21 AS SECTION 5-21 PERTAINING TO HEARING OFFICER DECISIONS; REVIEW; BY RENUMBERING SECTION 15-22 AS SECTION 5-22 PERTAINING TO MUNICIPAL COURT; CIVIL HEARING DIVISION; HEARING OFFICER; APPOINTMENT, DESIGNATION; BY RENUMBERING SECTION 15-23 AS SECTION 5-23 PERTAINING TO CIVIL HEARINGS; POWERS AND DUTIES OF HEARING OFFICERS; IDENTIFYING CURRENT CHAPTER 5 OF THE PEORIA CITY CODE (1992) TO BE RENUMBERED AND/OR AMENDED BY A SEPARATE ORDINANCE; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-1 as Section 5-1 pertaining to Municipal Court; presiding judge; appointment of judges; terms and which shall read as follows:

Sec. ~~5-15~~-1. Municipal Court; presiding judge; appointment of judges; terms.

(a) The presiding officer of the Municipal Court shall be the presiding Municipal Judge who shall be appointed by the City Council.

(b) The Presiding Municipal Judge shall serve a term of four years. The term shall commence on July 1, 2008 and terminate four years thereafter. At such time as more than one municipal judge shall be appointed, the terms shall be staggered to provide that no more than one appointment shall occur in a calendar year until there is at least one Presiding Municipal Judge and three associate municipal judges.

SECTION 2. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-2 as Section 5-2 pertaining to Municipal Court; removal of municipal judges and which shall read as follows:

Sec. ~~515~~-2. Municipal Court; removal of municipal judges.

(a) The council may remove the presiding municipal judge or any municipal judge appointed by the presiding municipal judge upon any of the following circumstances:

(1) If the municipal judge pleads guilty, no contest, or is found guilty of a crime punishable as a felony under any law of this state, even if the offense occurred in another state or a federal law, or any other crime that involves moral turpitude;

(2) If the municipal judge has a disability that interferes with the performance of their duties and has failed to discharge the duties of the office of municipal judge for three consecutive months.

(3) If the municipal judge engages in conduct that constitutes willful misconduct in office, willful and persistent failure to perform the duties of municipal judge, habitual intemperance or conduct prejudicial to the administration of justice that brings the judiciary and judicial office into dispute.

(b) Upon a finding of any of the circumstances in subsection (a) of this section, the city council shall adopt a resolution declaring the office to be vacant.

SECTION 3. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-3 and renumbering it as Section 5-3 pertaining to Municipal Court; appointment of assistant municipal judges, judges pro-tempore, court administrator, civil hearing officer, and other court employees and which shall read as follows:

Sec. ~~515~~-3. Municipal Court; appointment of assistant municipal judges, judges pro-tempore, court administrator, civil hearing officer, and other court employees.

The presiding municipal judge:

(a) After nomination by the Judicial Selection Advisory Board, may with council approval appoint persons meeting the same requirements as the Presiding Municipal Judge under the code and charter as Associate Municipal Judges and appoint judges pro tempore. Judges pro tempore shall have all the powers of the municipal judge, except that they shall serve only on a temporary basis when assigned by the presiding municipal judge.

(b) Shall appoint the court administrator, civil hearing officers and all other court employees in accordance with the city's adopted personnel ordinances, regulations and policies.

(c) Shall exercise supervision over all court personnel assigned to the municipal court and exercise the responsibilities granted to the city manager under section 2-66 (2) of this code as they pertain to court employees.

SECTION 4. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-4 and renumbering it as Section 5-4 pertaining to Municipal Court; juries; fees and mileage and which shall read as follows:

Sec. ~~5~~4-4. Municipal Court; juries; fees and mileage.

(a) A juror shall receive a juror per diem in such amount, inclusive of mileage, as council shall fix by ordinance from time to time, said per diem to be provided to those jurors empaneled for trial. ~~Each juror shall be paid by the city:~~

~~(1) For each day's attendance at the Municipal Court and for all miles necessarily traveled from his residence to the court and back to his residence, the amounts set forth in Chapter 2 of this Code.~~

(b) Attendance on the court shall include the first day a trial juror is required to attend and shall continue each day of actual attendance on the court thereafter, until the juror is either temporarily or permanently excused from jury service. ~~Any juror who is excused from further attendance upon the first day of this appearance in obedience to a summons shall receive the amount for the first day's service.~~

SECTION 5. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-5 and renumbering it as Section 5-5 pertaining to Municipal Court; powers and duties and which shall read as follows:

Sec. ~~5~~4-5. Municipal court; powers and duties.

The municipal court shall have the following powers and duties:

(a) Fix and receive bonds, bails, deposits and receive assessments, fines, penalties, fees, sanctions and other monies provided by law to be collected or received by the municipal court and shall disperse same in accordance with law. Any fine, sanction, fee, penalty, or other assessment imposed by the court may also include any applicable additional surcharge, enhancement fee, or increased amount.

(b) Promulgate local rules of procedure for operation of the municipal court consistent with those provided by the Arizona Supreme Court and adopt administrative regulations for procedures governing the conduct of administrative hearings, trials and other proceedings.

(c) Enter default judgments where the defendant failed to appear after being properly summoned.

(d) Suspend matters designated as civil sanctions under this code and refer such matters to alternative dispute resolution programs approved by the court.

(e) Collect any administrative fee, surcharge or fees for the enforcement of criminal fines or civil sanctions. The Court shall retain continuing jurisdiction over the matter until all administrative fees have been paid.

(f) Assess an administrative fee not to exceed five hundred dollars (\$500.00) For the issuance of or quashing of a warrant, failure to pay criminal fines, jail fees, restitution, assessments, civil traffic sanctions, other civil sanctions, comply with court orders regarding probation, or counseling classes or diversion programs.

(g) Waive all or part of any administrative fee if the court finds such waiver would be in the interest of justice.

SECTION 6. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-6 as Section 5-6 pertaining to Code violations, classifications, civil sanctions and which shall read as follows:

Sec. ~~515~~-6. Code violations, classification, civil sanctions.

In cases involving violations of this code that enforcement by civil or criminal sanctions are authorized and that were initially filed as a criminal matter, the court upon taking account of the nature and circumstances of the offense, may enter judgment of conviction for a misdemeanor and make disposition accordingly or may place the defendant on probation in the manner provided by Title 13, Chapter 9 and refrain from designating the offense a misdemeanor. Upon satisfactory completion of the requirements of the sentencing judgment and the probationary period, the court may enter an order designating the offense a civil violation.

SECTION 7. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-7 as Section 5-7 pertaining to Municipal Court; Court Enhancement Fund and which shall read as follows:

Sec. ~~515~~-7. Municipal Court; Court Enhancement Fund.

(a) The Presiding Judge of the Municipal Court upon written notice to the Mayor, Council and Finance Director may institute a Court Enhancement Fund, which shall be designated the "Peoria Court Enhancement Fund" (hereinafter "PCEF").

(b) PCEF revenues collected in accordance with this section shall be used by the Municipal Court to enhance court service levels in the areas of

records management, case processing, technology and technology applications and security. The purpose of PCEF is to provide supplemental funding to enhance Municipal Court services. PCEF shall not replace existing levels of funding provided through the budget process of the City as approved by the Mayor and Council through the City's annual budget.

(c) The PCEF assessment shall be imposed by the Court upon each charge or violation cited within the jurisdiction of the Municipal Court. The PCEF assessment shall not be subject to other statutory surcharges or preferences.

(d) The amount of the PCEF assessment applicable to each charge or violation shall not exceed the sum of twenty dollars (\$20.00). The specific assessment shall be published on an annual basis in an administrative order issued by the Presiding Judge of the Municipal Court and copies filed with the City Attorney, City Clerk and Finance Director.

(e) PCEF revenues may also include the base funds and any PCEF assessment upon the following items:

- (1) fees payable to the City as its portion of the defensive driving school;
- (2) bond or surety forfeitures;
- (3) default fees;
- (4) warrant fees;
- (5) fees for compliance with court orders,
- (6) diversion fees payable to the court.

(f) The Presiding Judge of the Municipal Court and the Finance Director shall provide an annual report to the Mayor and Council on the uses of and impacts of PCEF during the past fiscal year.

SECTION 8. Chapter 15 of the Peoria City Code (1992) is amended by repealing Section 15-8 in its entirety pertaining to Judicial Selection Advisory Board – Establishment; membership; powers and duties; operating procedures and renumbering it as Reserved Section 5-8 and which shall read as follows:

~~Sec. 515-8. Judicial Selection advisory Board—Establishment; membership; powers and duties; operating procedures.~~ Reserved.

~~(a) There is hereby created a Judicial Selection Advisory Board to be composed of five members, consisting of the following:~~

- ~~(1) A Judge of the Arizona Superior Court Maricopa County as designated by the Presiding Judge of that Court;~~
- ~~(2) Two active members of the State Bar of Arizona, one of who must be a resident of the City of Peoria and who shall be appointed by~~

~~the Mayor from among nominees recommended by the State Bar's Board of Governors;~~

~~(3) Two public members who are nominated by the Mayor and who are residents of the City of Peoria. None of the public members or a member of their immediate family shall be an employee or elected official of the City of Peoria. Immediate family is defined as Spouse, Parent, Child, Sibling, Step Parent, Step Child, Grand Parent, Grand child.~~

~~(b) All members other than the Judge of Superior Court shall be subject to confirmation by the City Council. The Judicial Selection Advisory Board shall be deemed a non-scheduled board in accordance with Chapter 2 of the Peoria City Code. Members shall serve a term of four years. The members shall serve without salary or compensation.~~

~~(c) The Board's officers shall consist of a chairman and vice chairman, each selected from the Board's members. Officers shall serve one-year terms. The members shall determine operating procedures for the Board, which shall be kept in writing. The vice chairman shall preside whenever the chairman is absent or unable to act. The chairman will have the duty to prepare written reports as may be requested by the City Council.~~

~~(d) The Board shall have the following powers and duties:~~

~~(1) To conduct investigations into the background and qualifications of candidates for the office of Presiding Municipal Judge and Associate Municipal Judge, including but not limited to the use of questionnaires, personal interviews, and contacting such individuals and institutions as it deems reasonable to obtain as much background information on the candidate as possible.~~

~~(2) In the case of the Presiding Municipal Judge, if the Presiding Municipal Judge is seeking reappointment for a new term of office commencing July 1, then by January 31, of the year in which the term of the Presiding Municipal Judge ends, the Board shall commence the process to review and submit a recommendation to the City Council Subcommittee on Charter Officers regarding the reappointment of the Presiding Municipal Judge. The Board shall submit its recommendation no later than April 1 of the year in which the term of the Presiding Municipal Judge ends.~~

~~(3) If the position of the Presiding Municipal Judge is vacant, The Board shall review all applications for the position. The Board shall recommend to the City Council, three persons nominated by the Board to fill the vacancy. The vacancy shall be filled by the City Council from the names submitted to the Council by the Board.~~

~~(4) In the case of an Associate Municipal Judge, if the Associate Municipal Judge is seeking reappointment for a new term of office commencing July 1, then by January 31, of the year in which the term of the Associate Municipal Judge ends, the Board shall commence the process to review and submit a recommendation to the Presiding Municipal Judge regarding the reappointment of the Presiding Municipal Judge. The Board shall submit its recommendation no later than April 1 of the year in which the term of the Associate Municipal Judge ends.~~

~~(5) If the position of the Associate Municipal Judge is vacant, The Board shall review all applications for the position. The Board shall recommend to the Presiding Municipal Judge, three persons nominated by the Board to fill the vacancy. The vacancy shall be filled by the Presiding Municipal Judge from the names submitted by the Board.~~

~~(e) The Board may consider the diversity of the community in making its recommendations, However, in submitting its recommendations for candidates for appointment or reappointment to the office of Presiding Municipal Judge or Associate Municipal Judge, the Board shall make such recommendations without regard for race, religion, political affiliation or sex of the candidate.~~

~~(f) The meetings of the Board shall be held once each year for the purpose of reviewing operating procedures and on call of the chairman or a majority of the members.~~

~~(g) The chairman of the Board shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy in the office of judge of the City Court. The Board shall, whenever practical, hold public meetings designed to permit interested parties and groups to submit and recommend persons for consideration.~~

SECTION 9. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-9 as Reserved Section 5-9 and which shall read as follows:

515-9. Reserved.

SECTION 10. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Sections 15-10 through 15-11 as Reserved Sections 5-10 through 5-11 and which shall read as follows:

Sec. 515-10 through 515-11. Reserved.

SECTION 11. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-12 as Section 5-12 pertaining to Civil hearings, citation; sufficiency; amendment and which shall read as follows:

Sec. ~~515~~-12. Civil hearings, citation; sufficiency; amendment.

(a) A complaint is legally sufficient if it contains either a written description or the statutory designation of the alleged violation.

(b) A court may amend a civil citation under this chapter as follows:

1. At any time before judgment if no additional or different violation is charged and if substantial rights of the defendant are not prejudiced.

2. To conform to the evidence adduced at hearing if no additional or different violation is charged and if substantial rights of the defendant are not prejudiced.

(c) All amendments to a complaint relate back to the date on the complaint or the date of violation, whichever is earlier.

(d) Where there is a conflict between the written description and the statutory designation of a civil traffic violation, the descriptive text shall take precedence unless substantial rights of the defendant are prejudiced or such action would result in a criminal charge. If a judicial officer is unable to determine what offense is charged, the charge shall be dismissed without prejudice and the issuing agency notified.

SECTION 12. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-13 as Section 5-13 pertaining to Civil hearings, citation; service and which shall read as follows:

Sec. ~~515~~-13. Civil hearings; citation; service.

(a) The city manager or his designee, is authorized to investigate any complaints of violation of those chapters of the code providing for enforcement by civil sanctions.

(b) The city manager or his designee, upon a reasonable belief that a violation exists, may issue a citation stating generally the nature of the violation to the respondent. The citation shall be in a format similar to that of the Arizona Uniform Traffic Ticket and Complaint and shall be issued in the manner provided in A.R.S. §13-3903. The citation shall reasonably describe the nature of the violation to the respondent. The citation shall notify the respondent that in the event of a failure to appear or schedule a hearing on or before the date specified in the complaint, a judgment by default will be entered against them, and the Court shall impose a civil sanction not to exceed five hundred dollars (\$500.00), plus any charge for service of process.

(c) As an alternative to the issuance of a citation pursuant to subsection (b), the City Attorney may commence an action by filing a complaint in Municipal Court.

(d) Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

(1) By having the respondent sign the citation with the promise to appear in Court or schedule a hearing within ten days of the issuance of the citation.

(2) By hand delivering a copy of the citation to the respondent.

(3) By receiving an acknowledgement of the receipt of the citation by first-class mail executed by the respondent within fifteen calendar days of the date of mailing the citation.

(4) In the event that service can not be accomplished as set forth in paragraphs (1), (2) or (3) of this subsection, the City may serve the respondent by any means allowed by the Arizona Rules of Civil Procedure for the Superior Court. In the event that the City is required to use a process server to serve the Respondent after providing the respondent the opportunity to acknowledge receipt of the citation previously mailed to respondent, the hearing officer shall include an amount set forth in this code to reimburse the City for the cost of process service of the citation.

(e) Each and every day during which the violation occurs is a separate violation.

SECTION 13. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-14 and renumbering it as Section 5-14 pertaining to Civil hearings; process; continuances and which shall read as follows:

Sec. ~~5-15~~-14. Civil hearings; process; continuances.

(a) If a defendant denies the allegations contained in the complaint and requests a hearing, the court shall promptly provide the defendant written notice of a hearing date. The notice of hearing date shall also state that the right to be represented by counsel at the hearing is waived unless the court and the State are notified in writing at least 10 calendar days prior to the hearing date.

(b) Absent extraordinary circumstances, failure of a defendant to timely notify the court and the State constitutes a waiver of the right to counsel at the hearing.

(c) The court may, upon motion of a party or witness, or on its own motion, continue the hearing ~~on a civil traffic case for a period not exceeding 60 days,~~ if it appears that the interests of justice so require.

(d) Absent extraordinary circumstances, no hearing shall be continued by the court without notice to both parties.

(e) The court shall notify the parties and witnesses in writing of the new hearing date.

SECTION 14. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-15 and renumbering it as Section 5-15 pertaining to Civil hearings; duty to respond and which shall read as follows:

Sec. ~~5~~15-15. Civil hearings; duty to respond.

(a) The respondent may admit responsibility by appearing in person, or by submitting a form or a statement signed by the respondent admitting the allegations of the complaint. The respondent shall, at the same time, tender the civil sanction listed in the court's deposit schedule for the civil violation(s) and direct the respondent to comply with the requirements of the code.

(b) The respondent may deny responsibility by appearing in person or by notifying the court in writing. The respondent may, at the same time, tender the civil sanction listed in the court's deposit schedule for civil violations to insure that no driver's license suspension will result from failure to appear. Upon receipt of said notice, the court shall set the matter for hearing and notify the defendant of the date, time, and place for the hearing.

(c) If within a period of thirty-six months from the date of the determination of responsibility, the respondent has been determined to be responsible for a civil violation of Chapter 17 of this Code or Chapter 14 of the Peoria City Code (1977) the hearing officer ~~shall~~ may impose a civil sanction according to the schedule of fines adopted by the hearing officer, not to exceed One Thousand (\$1,000.00) dollars and direct the respondent to comply with the requirements of the code. ~~The Court shall not suspend the minimum amount for the civil sanction set forth on the Court's adopted deposit schedule.~~

(d) Within ~~twenty (20)~~ thirty (30) days following service of the citation, a Notice of prior violation shall may be filed by the City Manager or his designee alleging the date of previous civil violations for which the respondent has previously been found responsible by this Court. The Municipal Court ~~shall~~ may consider such prior violations as a basis to increase the sanction for the pending citation. take judicial notice of the determination of responsibility upon allegation of the dates and filing of the notice.

(e) Failure to respond timely to a citation shall result in a default being entered against the respondent. Upon entering a default, the hearing officer shall enter an order as if a determination that a violation has occurred had been made.

SECTION 15. Chapter 15 of the Peoria City Code (1992) is amended by Section renumbering 15-16 as Section 5-16 pertaining to Civil hearings; rules of procedure and which shall read as follows:

Sec. ~~5-15~~-16. Civil hearings; rules of procedure.

(a) At the hearing, the city employee or the city attorney on behalf of the city employee responsible for enforcement of code violations shall present evidence of the violation and the respondent or his designated representative shall have the opportunity to present evidence.

(b) Formal rules of evidence shall not apply and the hearing officer may admit any evidence deemed relevant or probative by the hearing officer.

(c) The rules of procedure regarding change of judge as a matter of right shall not apply in civil sanction cases except for cases consolidated with criminal matters.

(d) Civil and criminal traffic cases based on the same conduct or otherwise related in their commission; may be consolidated at any point in the proceedings on motion of a party or on the court's own motion.

(e) No pre- hearing discovery shall be permitted absent extraordinary circumstances.

(f) Immediately prior to the hearing, both parties shall produce for inspection any pre-prepared exhibits and written or recorded statements of any witness. Failure to comply with this rule may result, in the court's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

(g) During the hearing:

1. Upon request of the defendant, the citing officer shall produce any notes made by the officer in reference to the civil citation. This rule shall not be construed to create a duty on the officer to maintain or preserve notes.

All testimony shall be given under oath or affirmation.

3. The court may, on its own motion, call and examine witnesses, including the defendant in cases other than those consolidated pursuant to Rule 14 of these Rules.

4. No person may be examined or cross-examined at a hearing except by the court, the code officer, an attorney for a party, or the defendant.

(h) All witnesses for the State's case in chief shall be required to testify prior to the defendant's case. However, a witness not called to testify in the State's case in chief may be called in rebuttal to testify to an issue raised by the defense.

SECTION 16. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-17 as Section 5-17 pertaining to Civil hearings, order of proceedings and which shall read as follows:

Sec. ~~5-15~~-17. Civil hearings; order of proceedings.

The order of proceedings shall be as follows:

- (a) Direct, cross, and re-direct examination of State's witnesses.
- (b) Direct, cross, and re-direct examination of defense witnesses.
- (c) Direct, cross, and re-direct examination of State's rebuttal witnesses, if any.
- (d) Direct, cross, and re-direct examination of defense surrebuttal witnesses, if any.
- (e) Argument of the parties or their counsel if permitted by the court.
- (f) Ruling by the court.

SECTION 17. Chapter 15 of the Peoria City Code (1992) is amended by amending Section 15-18 and renumbering it as Section 5-18 pertaining to Civil hearings; judgments and which shall read as follows:

Sec. ~~5-15~~-18. Civil hearings; judgments

(a) The hearing officer upon decision shall enter a ~~written judgment that includes the findings of fact and conclusions of law of the hearing officer in the proceeding and the finding of responsible or not responsible~~ or other proper disposition. The judgment shall may include the imposition of a civil penalty and/or the entry of an abatement agreement or order. The abatement agreement or order may include an order by the civil hearing officer that the respondent post a financial guarantee with the city to pay for the cost of cleaning up the property and/or to comply with the applicable provisions of the city code. The civil hearing officer may impose such other requirements as appropriate.

(b) If the hearing officer finds that a violation has occurred, they shall issue an order designating the violation to be a nuisance and impose a civil penalty against the respondent. Additionally, for a period of one year after the hearing officer's order, the city attorney or any person affected by the nuisance may bring a civil action in the municipal court to abate the nuisance.

(c) A civil penalty may be assessed up to \$500.00 for each violation. The hearing officer shall assess additional penalties provided by this code for failure to pay a civil sanction. Such penalties shall be subject to collection and enforcement in the same manner as the judgment.

(d) In addition to any sanction or penalty provided for in this code, a person found to be in violation shall be liable for all costs that may be associated with the City's bringing the premises into compliance with this code. The hearing officer shall impose restitution as part of the sentence.

(e) At the time of sentencing for a civil violation of the code, the hearing officer may suspend the amount of any sanction in excess of the minimum sanction on the Court's adopted deposit schedule, if the responsible party shows by a preponderance of the evidence that the violation has been corrected.

(f) If the defendant is found not responsible, the court shall enter judgment for the defendant.

(g) Any judgment for civil sanctions taken pursuant to this Chapter may be collected as any other civil judgment. The City Attorney may record the judgment with the County Recorder on behalf of the City. The cost of recording the judgment shall be assessed against the respondent and collected in the same manner as the judgment.

SECTION 18. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-19 as Section 5-19 pertaining to Civil hearings, default judgments and which shall read as follows:

Sec. ~~5~~15-19. Civil Hearings; default judgments.

(a) If no witness for the State, excluding the defendant, appears at the time set for hearing, the court shall dismiss the complaint and return any deposit, unless the court, for good cause shown, continues the hearing to another date.

(b) Except where subsection (c) of this section is applicable, if the defendant fails to appear as required, the allegations of the complaint shall be deemed admitted, and the court shall enter judgment for the State, impose a civil sanction as set forth in the adopted schedule, and direct the defendant to comply with the provisions of the code at issue. For those complaints filed prior to the effective date of this ordinance and meeting the requirements of this section, the court may enter a default judgment in accordance with the provisions of this section.

(c) If it appears that the defendant is in active military service, no default judgment may be entered.

(d) Upon written motion for mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear. Such written motion shall be filed within thirty (30) days after issuance of a default judgment.

SECTION 19. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-20 as Section 5-20 pertaining to Civil hearings, consolidated cases; burden of proof and which shall read as follows:

Sec. ~~5~~15-20. Civil hearings; consolidated cases; burden of proof.

(a) At the hearing on any civil case, the city shall have the burden to prove by a preponderance of the evidence that the respondent was responsible for the violation for which the citation was issued. A person asserting an affirmative defense must plead and prove it by a preponderance of the evidence.

(b) At the trial of any consolidated case, the rules governing the criminal case shall apply, except that the civil case shall be tried to the court, and the standard of proof in the civil case shall be by a preponderance of the evidence.

SECTION 20. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-21 as Section 5-21 pertaining to Hearing officer decisions; review and which shall read as follows:

Sec. ~~5~~15-21. Hearing officer decisions; review.

Final decisions of the hearing officer under this subsection are subject to judicial review under the rules of procedure for special actions.

SECTION 21. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-22 as Section 5-22 pertaining to Municipal Court; civil hearing division; hearing officer, appointment, designation and which shall read as follows:

Sec. ~~4~~5-22. Municipal Court; civil hearing division; hearing officer, appointment, designation.

There is established a civil hearing division within the municipal court:

(a) The presiding municipal judge shall serve or may appoint individuals or designate civil traffic hearing officers or judges pro tempore of the municipal court to act as a civil hearing officer for the purpose of hearing civil enforcement actions arising under this code. All appointments under this section shall be subject to council approval.

(b) Appointments of a civil hearing officer pursuant to this section shall be for a period of two years, provided that such appointment may be terminated in accordance with the city's personnel regulations.

(c) Individuals compensated for other judicial services shall not receive duplicate compensation for performing the duties of civil hearing officers. Compensation for civil hearing officers, shall be approved by the council. Further, the municipal court may use volunteer hearing officers for no compensation.

SECTION 22. Chapter 15 of the Peoria City Code (1992) is amended by renumbering Section 15-23 as Section 5-23 pertaining to Civil hearings; powers and duties of hearing officers and which shall read as follows:

Sec. ~~5-15~~-23. Civil hearings; powers and duties of hearing officers.

Civil hearing officers appointed or designated under this chapter may:

(a) With the approval of the presiding municipal judge direct the clerk of the municipal court to perform the non judicial duties assigned to the civil hearing officer.

(b) Perform those functions in civil hearing matters equivalent to those assigned to a judge of the municipal court under title 22, Arizona Revised Statutes and city's charter and code.

(c) Refer civil matters for mediation any alternative dispute resolution program approved by the municipal court. The hearing officer may assess the cost of the alternative dispute resolution against the parties.

(d) The hearing officer may enter the decision of an alternative dispute resolution program as a civil judgment in the same manner provided for other judgments under this chapter.

SECTION 23. The current sections of Chapter 5 of the Peoria City Code (1992) will be renumbered and/or amended by way of a separate ordinance to be submitted to the Mayor and City Council for approval.

SECTION 24. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 25. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria,
Arizona, this 7th day of March, 2017.

Dated: _____

Cathy Carlat, Mayor

ATTEST:

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Stephen J. Burg, City Attorney

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