# JACKSONVILLE ENVIRONMENTAL PROTECTION BOARD

# RULE 1

# ORGANIZATION PROCEDURE AND PRACTICE

**Amendments:**

1. Ordinance 85-1295-690, amended November 12, 1985

2. Ordinance 89-1235-597, amended December 12, 1989

3. Ordinance 91-193-80, amended March 26, 1991

4. Ordinance 91-902-417, amended October 8, 1991

5. Amended May 10, 2010, Effective June 1, 2010

6. Amended November 19, 2012, Effective December 10, 2012

**FINAL RULE WITH RESPECT**

**TO**

**ORGANIZATION PROCEDURE AND PRACTICE**

**RULE 1**

**PART I - DESCRIPTION OF ORGANIZATION**

1.101 Definitions

1.102 Board Description

1.103 Address, Office Hours, Public Access, Meetings

1.104 General Description of Board Organization and Operations

**PART II - BOARD PROCEEDINGS - RULE MAKING**

1.201 General

1.202 Petition For Rulemaking

1.203 Form of Rules

1.204 Rule Hearing and Public Comments

1.205 Conduct of Public Rulemaking Hearings

1.206 Formulation of Final Rules

1.207 Promulgation of Final Rules

1.208 Effective Date of Final Rule

1.209 Withdrawal of Rules

**PART III - BOARD PROCEEDINGS - ENFORCEMENT**

1.301 Citations, Complaints and Hearings

1.302 Enforcement Hearings

1.303 Appeals

**PART IV - FEES AND COLLECTION OF FEES**

1.401 Definitions

1.402 Delinquent Payments Deemed Violation of Rule

**PART V - BOARD PROCEDURES - COMPLIANCE PLANS**

1.501 Purpose.

1.502 Compliance Plan

1.503 Compliance Agreements

1.504 Compliance Agreements Embodying Compliance Plans

1.505 Board Approval of Compliance Plans and Compliance Agreements

1.506 Compliance Plan – Length of Time and Extensions

**PART VI - BOARD PROCEEDINGS - VARIANCES**

1.601 Variances - Incorporation of 360.111, Ordinance Code.

1.602 Disposition of the Request for Variance (Except for Irrigation…)

1.603 Variance – Variances pursuant to 366.506, Ordinance Code

1.604 Disposition of the Request for Variance pursuant to 366.506, Ordinance Code

**PART VII - PROCEDURE FOR FILING AND VERIFYING CITIZEN ODOR COMPLAINTS**

1.701 Statement of Intent

1.702 Procedures for Odor Complaint Verification

1.703 Training

1.704 Use of Meteorological Instruments

1.705 Odor Episodes

1.706 Safety

**JACKSONVILLE ENVIRONMENTAL PROTECTION BOARD**

**RULE 1**

**ORGANIZATION PROCEDURE AND PRACTICE**

**Specific Authority**

The Jacksonville Environmental Protection Board adopts this rule with the specific Authority found in Sections 73.102 and 360.108, Ordinance Code.

[History: New 5/10/10]

**PART I**

**DESCRIPTION OF ORGANIZATION**

**1.101 Definitions~~.~~**

As used throughout these rules:

A. Board means the Environmental Protection Board.

B. City means the City of Jacksonville, Florida.

C. City Council means the City Council of Jacksonville, Florida.

D. Department means the Neighborhoods Department (ND).

E. Director means the Director of the Department.

F. Division Chief means the Chief of the Environmental Quality Division.

G. Environmental matter, law, regulation or rule means any reference to ordinances contained within Title X, Environmental Affairs, Ordinance Code of the City of Jacksonville (also generally referred to hereinafter as Title X, Ordinance Code) and the Jacksonville Environmental Protection Board Rules.

H. EQD means the Environmental Quality Division

I. Ordinance Code means the City's official codification of ordinances.

J. Staff means Department acting under supervision of the Director of the Neighborhoods Department.

[History: Amended 5/10/10; Amended 11/19/12]

**1.102 Board Description**

A. The Board is created by special legislation in Laws of Florida Chapters 89-439, 91-362 and 2001-318, and pursuant to Chapter 73, Ordinance Code. In addition to its power and duties therein specified, the Board is charged with the responsibility of adopting and enforcing rules to implement environmental health and quality, as provided in Chapter 73 and Title X, Ordinance Code.

B. The Department is an administrative unit of the City, created pursuant to Chapter 35, Ordinance Code. The Department is headed by a Director and is composed of five (5) divisions, including the Environmental Quality Division. The Director, in addition to functions specified in Chapter 35, Ordinance Code, is charged with the administration of certain Chapters of Title X, Ordinance Code, with the administration of rules promulgated by the Board to implement those chapters; and is required to make regular reports to the Board.

C. The EQD is an integral part of the Department, created by Chapter 35, Part 2, Ordinance Code. Headed by the Division Chief, it has the general responsibility for the enforcement of the provisions of pollution ordinances of the City and the rules promulgated by the Board. As an integral part of the Department, the EQD is the duly authorized representative~~s~~ of the Director and provides staff assistance in the administration of Title X, Ordinance Code and of Board rules promulgated to implement those chapters.

[History: Amended 5/10/10; Amended 11/19/12]

**1.103 Address, Office Hours, Public Access, Meetings**

A. General - The Board address is:

Environmental Protection Board

214 North Hogan Street, 5th Floor

Jacksonville, Florida 32202

The telephone number is (904) 255-7111

Information or requests for copies of rules, orders, publications or other documents, issued by the Board, may be viewed or obtained, by the public at the above address.

B. Meetings - Regular, Special, Emergency:

1. The Board conducts regularly scheduled meetings to conduct normal business and routine agendas. The meeting times and schedules are posted on the Board’s website.

2. The Board may schedule special meetings from time to time in order to consider one or more specific agenda items when urgency or expectations of discussion precludes inclusion in a regular meeting. Notice of special meetings may be published as required by law or this Rule.

3. The Chair, on his own initiative or upon the direction of the Mayor, may convene an emergency session in the event of a major episode, disaster or in accordance with an emergency plan.

4. Usually, meetings whether regular, special or emergency session shall be held on the 5th Floor of the Ed Ball Building, 214 North Hogan Street, Jacksonville, Florida, and are open to the public. However, the Board from time to time holds its meetings at various parts of the City.

5. All persons affected by actions of the Environmental Protection Board and members of the general public are invited to be heard at all meetings the Board.

All comments by affected persons or members of the general public are limited to three (3) minutes in length unless otherwise directed at the discretion of the Chair.

[History: Amended 5/10/10; Amended 11/19/12]

**1.104 General Description of Board Organization and Operations**

A. General - The Board is established as a rulemaking, enforcement body and hearing platform in environmental matters. The Board has specific delegated duties, responsibilities and powers with respect to rule making to implement and enforce City ordinances concerned with environmental regulations in Title X, Ordinance Code. The nine members of the Board are appointed by the Mayor and City Council to serve for four (4) years in a voluntary capacity (except for incidental expenses). The membership of the Board is described in Section 73.101, Ordinance Code, as amended, the provisions of which are incorporated herein by reference, as if they were reproduced in their entirety.

B. Chair - The Chair is the presiding officer of the Board and shall, on behalf of the Board provide policy guidance. The Chair of the Board will also preside as Chair of the Steering Committee. The Chair shall approve the agenda for each meeting and calendar for each hearing and may order items deleted from or added to the agenda as the Chair considers necessary to expedite the Board's business. The Chair shall sign all orders, resolutions, letters and other instruments enacted by the Board. The Chair shall administer all necessary oaths at hearings at which the Chair is presiding and shall request subpoena authority from City Council as necessary. The Chair shall normally be elected by majority vote of Board members at the regular September Board meeting to serve for a period of two (2) years commencing on October 1st following the election. The Chair shall appoint other Board members to standing committees, except that the Vice Chair shall be elected by majority vote of Board members at the regular September Board meeting to serve for a period of two (2) years commencing on October 1st following the election.

C. Vice Chair - The Vice Chair shall preside at meetings and hearings of the Board in the absence of the Chair and, in case of incapacity or prolonged absence of the Chair, perform other duties of the Chair. In the event of the death, resignation or removal of the Chair, the Vice Chair shall become Chair for the unexpired term thereof; the Board shall proceed at its next meeting to elect a Vice Chair for the unexpired term thereof. The Vice Chair shall normally be elected by majority vote of Board members at the regular September Board meeting to serve for a period of two (2) years commencing on October 1st following the election.

D. Members - Board members are appointed as noted in Section 73.101, Ordinance Code, and are subject to these procedures. Members are appointed to committees by the Chair and may be given assignments by the Chair or by a Committee Chair.

E. Counsel - The Counsel is a lawyer assigned to the Board by the Office of General Counsel. They are staff to the Board and provide legal opinions and interpretations and such other works as directed by the Chair. They assist in the preparation of rules and regulations, ordinances, resolutions and other documents originated by the Board. They advise the Board on procedures for meetings, hearings and provisions of government in the sunshine. They are not a Board member and not entitled to vote on issues before the Board. The Counsel is required to be present at regular or special Board meetings or hearings.

F. Board Staff - The Board's staff is comprised of the Environmental Protection Board Program Administrator and Secretary. Assignments include but are not limited to coordinating administrative matters for Board meetings, committee meetings, public hearings and/or workshops of the Board; overseeing the recording, preparation and maintenance of minutes of Board meetings; coordinating presentations on administrative and technical subjects to the Board; researching items to come before the Board and providing background information and recommendations to the Board; issuing and interpreting policies and directives of the Board through written and oral communications; reviewing and answering correspondence on behalf of the Board; researching and preparing reports for the Board; representing Board and committee members in meetings, seminars, workshops and hearings or in operational matters with private and governmental entities; publishing public notices required by law; and acting as liason between the Board and various individuals and groups including the Board’s Counsel, the Mayor’s office and the City Council. The Department staff, under supervision of its Director shall handle assignments from the Chair related to environmental matters.

G. Standing Committees - The Board may, by majority vote, establish one or more standing committees. The following are the standing committees of the Environmental Protection Board:

Steering Committee

Air/Odor/Noise Committee

Water/Hazmat/Land Committee

1. Steering Committee (SC) - The SC is composed of the Chair of the Board who is also designated Chair of the SC and such other members as may be appointed on a temporary basis by the Chair. The Division Chief, EPB Program Administrator and Board Counsel shall be in regular attendance. The Department staff assigned by the Director or Division Chief on a need basis shall be present at SC meetings.

The SC reviews other Committees’ work and develops the agenda for regular meetings and the calendar for hearings. The SC develops special studies, projects and reports, then submits them to the Board. The SC monitors attendance and audits Board funds. The SC develops internal policy and procedures, objectives, goals and policy for approval by the Board. SC meetings are conducted informally, but are open to the public.

2. Air/Odor/Noise Committee (AC) - The AC is composed of a Chair AC and two or more other members appointed by the Chair of the Board. The Committee will meet at the discretion of the Chair with due advance notice. In enforcement complaint proceedings, filed with the Board, the AC reviews the status but not the merits of all cases in every aspect of air pollution.

3. Water/Hazmat/Land Committee (WC) - The WC is composed of a Chair WC and two or more other members appointed by the Chair of the Board.

The Committee will meet at the discretion of the Chair with due advance notice. In enforcement complaint proceedings, filed with the Board, the WC reviews the status but not the merits of all cases in every aspect of water pollution and conservation.

4. Sub-Committee - The Chairs of the standing committees may establish sub-committees for special investigations, surveys, or studies to be conducted for fact finding and informational purposes for their respective committee deliberations. Sub-committees are normally to be assigned on an ad hoc basis.

H. Special Committees - The Chair may establish ad hoc special committees for special investigation, surveys or studies to be conducted for fact finding and informational purposes for the Board. Such committees will not be Standing Committees. Such committees are appropriate when the subject matter is not clearly assignable to one Standing Committee.

I. Public Access To Committees. The public is invited and urged to attend any committee meeting in which it has interest.

[History: Amended 5/10/10; Amended 11/19/12]

**PART II**

**BOARD PROCEEDINGS - RULE MAKING**

**1.201 General**

Proceedings held by the Board for the adoption, amendment or repeal of rules shall be conducted according to the provisions of this rule.

For purposes of hearing requests and for the submission of public comments and/or proposals specified due dates are determined to be the dates documents are received by the Board's staff and not the date of deposit in the mail. For purposes of notice of intended rule making publication shall be made in a newspaper of general circulation in the City.

[History: Amended 5/10/10]

**1.202 Petition For Rulemaking**

A person regulated by Board Rules or having a substantial interest in any Board Rule may petition the Board to adopt, amend or repeal a rule. The petition shall specify the action requested and, upon receipt of the petition, the Board shall publish a notice that the petition has been filed which will include the name of the petitioner and the type of action requested in the petition. Not later than 30 days after the date that the petition was filed, the Board shall either initiate rulemaking proceedings pursuant to this Rule or deny the petition with a written statement of its reasons for the denial, which shall be delivered to the petitioner and published.

[History: New 5/10/10]

**1.203 Form of Rules**

After June 1, 2010, each rule as amended and each newly proposed rule shall include as the first part of the rule a paragraph stating the specific rulemaking authority pursuant to which the rule is being adopted.

[History: New 5/10/10]

**1.204 Rule Hearing and Public Comments**

A. A public hearing will be required prior to Board action regarding adoption, amendment or repeal of rules not dealing exclusively with organization, procedure or practice. Notice of such public hearing shall be published at least once and in a newspaper of general circulation in the City, not less than 14 days nor more than 30 days prior to the public hearing. The notice shall give a plain explanation of the purpose and effect of the proposed rule, a summary of the proposed rule and the specific legal authority under which its adoption, amendment or repeal is authorized. Copies of proposed Rules shall be made available to the public at the Office of the Environmental Protection Board.

B. In every instance of proposed rulemaking relating exclusively to organization, procedure or practice, the Board shall state in the published notice a plain explanation of the purpose and effect of the proposed rule, a summary of the proposed rule and the specific legal authority under which its adoption, amendment or repeal is authorized. The notice shall also contain a statement that no public hearing will be held but that the Board will receive written comments and proposals from the public, the location where the comments and proposals may be delivered or mailed to the Board and the last day, not less than fourteen days after the date of publication of the notice, on which the comments and proposals will be received by the Board, together with a declaration that comments and proposals received by the Board shall be open to inspection by the public at the location to which they are delivered or mailed during normal business hours.

[History: Renumbered and Amended 5/10/10]

**1.205 Conduct of Public Rulemaking Hearings**

A. A presiding officer or Board member may at any time disqualify themselves on the filing of a timely and sufficient affidavit of disqualification. The Board shall determine the matter to be a part of the record and decision in the proceeding. Disqualification may be for personal bias or conflict of interest or for any other cause which would make impartiality unlikely.

B. A public hearing will be called to order by the presiding officer, who will then cause the public notice and an agenda of the hearing be read. After the agenda is read, the staff or proponent of a rule shall make a presentation which includes, but is not limited to:

1. Reasons and needs for proposed rules;

2. Statistical substantiating evidence of needs;

3. Comparisons with other municipalities;

4. Detailed explanation of proposed rules;

5. Written comments on proposed rules.

C. The staff presentation will be followed by other formal presentations as appropriate.

D. The presiding officer will then recognize those persons of the general public who wish to be heard either for or against the proposed rule. Where several persons are from the same area, group or organization they will select a spokesperson to present views of the group. The Board reserves the right to limit comment to three minutes for each person.

E. At the conclusion of the public presentation, the proponent of the rule may address any areas of concern expressed the public participants, for purposes of rebuttal or clarification.

F. At the conclusion of all presentations, the Board may vote to adopt, deny or return the intended rules to Department staff for further development. In the alternative and in its discretion, the Board may defer action on an intended rule until a subsequent meeting, the date for which shall be set pursuant to subpart 1.206 below.

G. The Board's secretary shall cause all public rulemaking hearings to be recorded by tape, or other electronic or digital method, which will be made available for record purposes. The record in a rulemaking proceeding shall also consist of:

1. The proposed rule and published notice;

2. Written comments, communications and other evidence received or considered by the Board;

3. Board reports or memoranda and other reports, papers, data or research which the Board considered in its deliberations; and

4. The final rule formulated by the Board.

[History: Renumbered and Amended 5/10/10; Amended 11/19/12]

**1.206 Formulation of Final Rules**

If the Board votes to adopt a rule immediately after the conclusion of all presentations, promulgation shall proceed pursuant to Board Rule 1.207 below. However, if the Board defers action, the Board's decision on whether or not to formulate final rules shall be made at either its next regular meeting; or at a special meeting to be held at a date agreeable to a majority of the Board Members. The meeting at which the Board makes its decision will be open to the public. However, it will not be a hearing for the receipt of comments, proposals or other information on the rules. At that meeting, for voting purposes, the Board may discuss among its own membership only, the rules under consideration concurrent with the decision on whether or not to formulate final rules, the Board shall state findings and reasons for its action.

[History: Renumbered and Amended 5/10/10]

**1.207 Promulgation of Final Rules**

The Board shall cause final rules to be filed with the Secretary to the City Council for publication. A rule is adopted when it is so filed. The Board Staff shall also cause a notice of final rules, to be published in a newspaper of general circulation in the City. However, the rule making proceeding is closed to further comments, proposals or hearings.

[History: Renumbered and Amended 5/10/10]

**1.208 Effective Date of Final Rule**

A final rule shall become effective 20 days after filing with the Secretary to the City Council.

[History: Renumbered 5/10/10]

**1.209 Withdrawal of Rules**

The Board may withdraw a proposed rule at any time before it is filed with the Secretary to the City Council. Withdrawal may be temporary or permanent. A notice of withdrawal shall be published.

A. Temporary Withdrawal - A rule that is temporarily withdrawn may be reconsidered by the Board and a final rule may be promulgated subject to public comments and hearings.

B. Permanent Withdrawal - A rule that is permanently withdrawn constitutes final Board action.

[History: Renumbered 5/10/10]

**PART III**

**BOARD PROCEEDINGS - ENFORCEMENT**

**1.301 Citations, Complaints and Hearings - Incorporation of Sections 360.401 through 360.505, Ordinance Code.**

A. The provisions relating to enforcement as they appear in Section 360.401 through and including Section 360.505, Ordinance Code, will be rules of the Board and are incorporated herein by reference as though they were reproduced in their entirety.

B. In addition to the specific provisions of Section 360.401, et seq Ordinance Code, a citation may be generated by the Department as a result of routine inspections and investigations or by complaint filed by another person. Said other person's complaint shall be filed in writing with the Department and shall conform to the requirements of Sec. 360.402, Ordinance Code.

C. In all instances involving complaints from other persons, the Department shall cause an appropriate investigation to be made into the alleged charges. If the investigation discloses sufficient evidence that a violation is being committed then, and in such event appropriate enforcement action shall be commenced.

D. Prior to the issuance of a citation, the Department may cause notices to correct to be issued. Prior to complaints being filed with the Board, the Department may cause warning letters to be issued.

[History: Renumbered and Amended 5/10/10]

**1.302 Enforcement Hearings**

In addition to the provisions of Chapter 360, Part 4, Ordinance Code, enforcement hearings shall be open to the public and conducted as follows.

A. Burden of Proof - The burden of proof for establishing a violation rests with the complainant.

B. Order of presentation at all enforcement hearings. The presentation of evidence shall take the following order:

1. The complainant's case in chief shall be presented first.

2. The respondent's case in chief shall follow the complainant's case in chief.

3. Rebuttal by the complainant shall follow respondent's case in chief; and shall be directed only to material contained in respondent's case in chief.

4. Further presentations including surrebuttal may be permitted at the discretion of the hearing officer upon showing of good cause.

[History: Renumbered and Amended 5/10/10]

**1.303 Appeals**

Appeals to Board orders shall be governed by Section 360.406, Ordinance Code. For purposes of these procedural rules, a timely filed petition for rehearing will constitute an appeal to a Board order or decision.

A. Petitions for rehearing must at a minimum allege:

1. Material error;

2. Substantially changed circumstances; or

3. Existence of new evidence. However, an allegation of new evidence must be accompanied by an explanation or statement that the evidence did not exist at the time a hearing on the merits was conducted; or if it did exist, why it was not presented in a timely manner.

B. Replies to petitions for rehearing may be filed by any adverse party within twenty (20) days of the service date of the petition. No replies to a reply shall be permitted.

C. A petition for rehearing and reply thereto must be in writing and must be served upon all parties to a proceeding or their counsel by either hand delivery or first class United States mail, postage prepaid. An appropriate certificate of service shall be attached to all petitions and replies. Failure to serve all parties may result in rejection of petition or reply.

D. Due dates for petitions for rehearing and replies thereto are determined to be the date of receipt by the Board's staff and not the date of deposit in the mail.

[History: Renumbered and Amended 5/10/10]

**PART IV**

**FEES AND COLLECTION OF FEES**

**1.~~4~~01 Definitions**

A. Maintenance Fees are fees assessed by City Council to recover a portion of the cost incurred for monitoring, sampling, inspecting and enforcement of pollution sources. These fees will, in part, pay for the necessary services required to protect the public health and welfare and are assessed and due on an annual basis. With the exception of connection to Regional Sewer the entire fee is due for the year regardless of how many days a source is in operation and shall be collected annually. These fees and the collection procedures for them are set forth in Chapter 123, Ordinance Code.

B. Variance Fees are assessed by City Council to recover a portion of the costs incurred for processing, investigation and staff time at hearings on applications for variances from Board Rules filed by regulated persons or entities pursuant to Sections 360.111 and 366.506, Ordinance Code. These fees are due with a filed application and no application for a variance from Board Rules shall be processed without payment of the prescribed fee. Variance fees are nonrefundable. These fees and the collection procedures for them are set forth in Chapter 123, Ordinance Code.

C. Potential Emissions - The maximum capacity of an emission unit or facility to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the emissions unit or facility to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of an emission unit or facility. These emissions shall be calculated using the most reliable emissions data obtained from AP-42 emission factors, emission tests, engineering calculations or other available information.

D. Source - is an identifiable piece of equipment (or the smallest integral combination of pieces of equipment, structures and necessary appurtenances) that is used as a complete unit to accomplish a specific purpose or to produce a specific product; and which:

1. Includes at least one activity or operation which is the point of origin of an air pollutant, in that it separates or allows the separation of a pollutant from process or other materials or accomplishes the conversion of all or part of various materials or fuels into a pollutant;

2. Has at least one emission or discharge point; and

3. Exists at or is designed to be operated as a unit at a fixed location, although parts of the source may move while the source is in operation, including, but not limited to, a source that can be relocated or mobile sources.

[History: Renumbered and Amended 5/10/10]

**1.402 Delinquent Payments Deemed Violation of Rule**

The Department shall be apprised of billing status by the Accounting Division of the City of Jacksonville Administration and Finance Department. In addition to the collection procedures set forth in Chapter 123, Ordinance Code, any facility which has not paid the maintenance fee within 30 days of the due date shall be deemed delinquent and in violation of this rule.

[History: Renumbered and Amended 5/10/10]

**PART V**

**BOARD PROCEDURES - COMPLIANCE PLANS**

**1.501 Purpose**

The purpose of this rule is to implement, Sections 73.102 and Chapter 360, Parts 1 and 3, Ordinance Code, which states:

The Board shall, by rule, specify what elements and provisions are required in a compliance plan and in a compliance agreement embodying the plan.

[History: Renumbered and Amended 5/10/10]

**1.502 Compliance Plan**

The compliance plan shall show how the Respondent plans to bring a non-complying facility into compliance. The compliance plan shall contain, but not be limited to,

A schedule showing the steps the non-complying facility will take to come into compliance with the law or rule or section thereof that the non-complying facility has violated and the date by which each step shall be completed, including but not limited to any repairs, improvements and/or construction needed, taking into account any permitting needs and requirements.

[History: Renumbered and Amended 5/10/10]

**1.503 Compliance Agreements**

A. A compliance agreement shall be in writing and shall contain an agreement as to the facts and stipulated remedial actions. A compliance agreement shall contain at least the following elements and provisions, where applicable.

1. The name of the agency (the Petitioner) entering into the compliance agreement.

2. The name and title of the person or persons (the Respondent) entering into the compliance agreement. This shall also include the name of the facility to be regulated by the compliance agreement.

3. The type and location of the facility named in the compliance agreement. This description should be sufficiently detailed so that the site can be readily located.

4. A list of any unresolved citations and/or other enforcement actions in the past 365 days, showing the law or rule violated along with a plan outlining any steps that have been or will be taken to comply.

5. The dates of meetings between the two parties with regard to the specified violation.

6. Provisions for the implementations of a civil penalty for each law or rule or section thereof that the facility has violated, to be paid by the Respondent within 30 days after acceptance of the compliance agreement by the Board. If no penalty is assessed, an explanation of the waiver of the civil penalty shall be provided.

7. An agreement by the Respondent that it waives its right to a hearing pursuant to Section 360.403(a), Ordinance Code.

8. An agreement by the Petitioner stating that if the Respondent abides by the terms of the compliance agreement, the Petitioner will seek no separate or further enforcement action, penalties or damage against the Respondent for violations specified in the compliance agreement.

9. An agreement between the Respondent and Petitioner that if the Respondent does not abide by the terms of the compliance agreement then the Petitioner may pursue all such civil and criminal penalties, procedures and action and remedies as are available at law or in equity.

10. An agreement by the Petitioner that the adoption of the compliance agreement shall constitute final action by the Petitioner pursuant to any of the Board rules which were cited in the Compliance Agreement.

11. A schedule for both sampling and maintenance for the named facility, if applicable.

12. A list of standards that the named facility must meet, if applicable.

13. The signature of the parties involved and the date on which the compliance agreement was signed.

[History: Renumbered and Amended 5/10/10]

**1.504 Compliance Agreements Embodying Compliance Plans**

Compliance agreements embodying compliance plans shall be a written agreement between the non-complying party and the City, negotiated by the Neighborhoods Department. The compliance plan may be incorporated by reference, attachment or demarked within the body of the agreement as appropriate to the plan's length and complexity.

[History: Renumbered and Amended 5/10/10; Amended 11/19/12]

**1.505 Board Approval of Compliance Plans and Compliance Agreements**

Board approval of compliance plans and compliance agreements shall be by Board Order.

A. Compliance Plans and Agreements may be considered within regular Board agendas. Consideration may include:

1. A staff presentation.

2. An opportunity for the non-complying party to respond.

3. Board adoption or rejection.

B. Thirty days shall be considered reasonable and sufficient time for a violator, who has been notified of the need for a compliance plan, to respond to a proposed Department Compliance Plan or to present an alternative compliance plan. If a party fails to respond within thirty days, the matter will be referred to the Office of General Counsel for further proceedings.

C. A Board order approving and accepting a compliance agreement, as evidenced by the signature of the Board Chair on that order shall constitute the signing of that compliance agreement by the Board Chair, as required in Section 360.301, Ordinance Code.

[History: Renumbered and amended 5/10/10, Amended 11/19/12]

**1.506 Compliance Plan – Length of Time and Extensions**

The length of time of a compliance plan approved by the Board and any extension thereof shall be in accordance with Section 360.302, Ordinance Code.

[History: New 5/10/10, Amended 11/19/12]

**PART VI**

**BOARD PROCEEDINGS - VARIANCES**

**1.601 Variances - Incorporation of 360.111, Ordinance Code.**

A. The provisions relating to variances as they appear in Section 360.111, Ordinance Code, will be rules of the Board and are incorporated herein by reference as though they were reproduced in their entirety.

B. In addition to the specific provisions given in Section 360.111, Ordinance Code, the Petitioner shall submit substantiating evidence with the variance request which will prove that a variance should be granted.

[History: Renumbered 5/10/10]

**1.602 Disposition of the Request for Variance (Except for Irrigation pursuant to Chapter 366, Ordinance Code)**

The following procedures are for all variances considered by the Board except for variances from irrigation requirements pursuant to Chapter 366, Ordinance Code. Those variance procedures are set forth in Rules 1.704 and 1.705, below.

A. The Board staff upon receipt of a copy of the request for a variance on the form established and provided by the Department, together with the appropriate fee set forth in Chapter 123, Ordinance Code, shall provide a copy of the request to the appropriate branch within the EQD and a copy to Counsel. A request for variance is not deemed submitted if payment of the appropriate fee has not been received with the request for variance.

B. Counsel shall then review the request for variance for completeness in compliance with Section 360.111, Ordinance Code.

1. If the request is found to be complete, Counsel shall notify Board staff.

2. If the request is found to be incomplete, Counsel shall notify Board staff regarding the petition deficiencies and Board staff shall return the petition and notify the Petitioner in writing regarding petition deficiencies, with specificity.

C. The Department staff will review the request for variance for determination of technical compliance and sufficiency. The Department may request any additional information of the Petitioner it determines is necessary for a complete review and evaluation of the request for variance. The Petitioner shall respond to any request for additional information within thirty days.

D. Petitioner may request a meeting with Department staff to discuss the request for variance once it has been found to be complete but prior to being placed on a Committee agenda.

E. After a chance for review of a complete request for variance, and any additional information requested by the Department, Board staff shall transmit the request for variance to the Steering Committee. The Steering Committee shall then send the request for variance to the appropriate standing committee and the request for variance may be placed on the agenda. Department staff and the Petitioner shall meet together at the scheduled committee meeting. The order of presentation shall be as follows:

1. The Department staff presentation shall include, but not be limited to

a. Rule from which variance is sought.

b. Status of facility's compliance with the rule from which variance is sought.

c. A summary of Section 360.111 (b), Ordinance Code.

2. Petitioner's presentation shall include, but not be limited to

a. The request for variance which specifically addresses each portion of Section 360.111(b), Ordinance Code.

b. Substantiating evidence which proves the need for a variance.

3. Staff discussion of the Petitioner's request for variance in which the Department staff concurs or disputes the Petitioner's facts.

4. Questions by the committee to the Petitioner and the Department staff.

5. The Department staff recommendations to the committee on the request for variance in which Department staff concurs, disagrees or proposes modifications to the request for variance.

6. After the Department staff recommendations, the committee shall either

a. Recommend additional time for the development of the request for variance. If this option is chosen, all involved parties must agree to the additional time and its duration; or

b. Recommend the request for variance be forwarded to the Steering Committee to be scheduled for public hearing.

F. The Steering Committee shall then establish a date for a public hearing on the request for variance. This date shall then be given to the Board staff.

G. Board staff upon receipt of the hearing date shall publish notice in a newspaper of general circulation in the City that a request for variance has been filed. This notice shall contain sufficient information to advise substantially affected persons of the proceedings. This notice shall be made at least ten days before the date of hearing.

H. Conduct of Public Variance Hearings.

1. A public hearing will be called to order by the presiding officer, who will then cause the public notice and agenda of the hearing to be read. After the agenda is read, the Department staff shall make a presentation which includes but is not limited to:

a. Rule from which variance is sought.

b. Status of facility in complying with rule from which variance is sought.

2. The Department staff presentation will be followed by the Petitioner's case as prescribed in Board Rule 1.602.E.1 above. The presentation shall include substantial evidence that proves the need for a variance.

3. The Department staff discussion of the Petitioner's case giving agreement or rebuttal of Petitioner's statement.

4. The presiding officer will then recognize those persons of the general public who wish to be heard either for or against the proposed variance. Where several persons are from the same area, group or organization, they will select a spokesperson to present for the group.

5. At the end of the public presentation, the Department staff may address any areas of concern expressed by the public for purposes of rebuttal or clarification.

6. Following the Department staff rebuttal or clarification presentation, the Petitioner shall have the opportunity to offer its own rebuttal or clarification.

7. At the conclusion of all presentations, the Board may ask questions of both the Department staff and the Petitioner for the clarification of any point or proposal made.

8. After all presentations and questions by the Board, the Board may grant or deny the variance. In the alternative and in its discretion, the Board may defer action on a variance until a subsequent meeting.

I. No fee submitted with a request for variance shall be refunded under any circumstance.

[History: Renumbered and Amended 5/10/10; Amended 11/19/12]

**1.603 Variance – Variances pursuant to 366.506, Ordinance Code**

A. The provisions relating to variances as they appear in Section 366.506, Ordinance Code, will be rules of the Board and are incorporated herein by reference as though they were reproduced in their entirety.

B. In addition to the specific provisions given in Section 366.506, Ordinance Code, the Petitioner shall submit substantiating evidence with the variance request which will prove that a variance should be granted.

[History: New 5/10/10]

**1.604 Disposition of the Request for Variance pursuant to 366.506, Ordinance Code**

A. The Board staff upon receipt of a copy of the request for a variance, on the form established and provided by the Department and the appropriate fee pursuant to Chapter 123, Ordinance Code, shall provide a copy of the request to the appropriate branch within the EQD and a copy to Counsel. A request for variance is not deemed submitted if payment of the appropriate fee has not been received with the request for variance.

B. Counsel shall then review the request for variance to determine if the information provided meets the requirements of Section 366.506, Ordinance Code.

1. If the request is found to contain sufficient information pursuant to Section 366.506, Ordinance Code, Counsel shall notify Board staff.

2. If the request is found to be incomplete, Counsel shall notify Board staff regarding the petition deficiencies and Board staff shall return the petition and notify the Petitioner in writing regarding petition deficiencies, with specificity.

C. The Department staff will review the request for variance for determination of technical compliance and sufficiency. The Department may request any additional information of the Petitioner it determines is necessary for a complete review and evaluation of the request for variance. The Petitioner shall respond to any request for additional information within thirty days.

D. Petitioner may request a meeting with Department staff to discuss the request for variance once it has been found to be complete but prior to being placed on a Committee agenda.

E. After a chance for review of a complete request for variance, and any additional information requested by the Department, Board staff shall transmit the request for variance to the Steering Committee. The Steering Committee shall then send the request for variance to the Water/Hazmat/Land Committee and the request may be placed on the agenda. Department staff and the Petitioner shall meet together at the scheduled committee meeting. The order of presentation shall be as follows:

1. The Department staff presentation shall include, but not be limited to

a. The status of the Petitioner’s current compliance with the Section 366.506, Ordinance Code, from which variance is sought; and

b. A summary of Section 366.506, Ordinance Code.

2. Petitioner's presentation shall include, but not be limited to

a. The request for variance which specifically addresses each portion of Section 366.506, Ordinance Code; and

b. Substantiating evidence which proves the need for a variance.

3. Staff discussion of the Petitioner's request for variance in which the Department staff concurs or disputes the Petitioner's facts.

4. Questions by the committee to the Petitioner and the Department staff.

5. The Department staff recommendations to the committee on the request for variance in which Department staff concurs, disagrees or proposes modifications to the request for variance.

6. After the Department staff recommendations, the committee shall either

a. Recommend additional time for the development of the request for variance. If this option is chosen, all involved parties must agree to the additional time and its duration; or

b. Recommend the request for variance be forwarded to the Steering Committee to be scheduled for public hearing.

F. The Steering Committee shall then establish a date for a public hearing on the request for variance. This date shall then be given to the Board staff.

G. Board staff, upon receipt of the hearing date, shall publish notice in a newspaper of general circulation in the City that a request for variance has been filed. This notice shall contain sufficient information to advise substantially affected persons of the proceedings. This notice shall be made at least ten days before the date of hearing.

H. Conduct of Public Variance Hearings.

1. A public hearing will be called to order by the presiding officer, who will then cause the public notice and agenda of the hearing to be read. After the agenda is read, the Department staff shall make a presentation which includes but is not limited to, a summary of Section 366.506, Ordinance Code, from which variance is sought, and status of the Petitioner in complying with Section 366.506, Ordinance Code.

2. The Department staff presentation will be followed by the Petitioner's case to include, but not be limited to, facts specifically addressing each portion of Section 366.506, Ordinance Code, and substantiating evidence which proves the need for a variance.

3. The Department staff will then discuss Petitioner's case giving agreement or rebuttal of Petitioner's statement.

4. The presiding officer will then recognize those persons of the general public who wish to be heard either for or against the proposed variance. Where several persons are from the same area, group or organization, they will select a spokesperson to present for the group.

5. At the end of the public presentation, the Department staff may address any areas of concern expressed by the public for purposes of rebuttal or clarification.

6. Following the Department staff rebuttal or clarification presentation, the Petitioner shall have the opportunity to offer its own rebuttal or clarification.

7. At the conclusion of all presentations, the Board may ask questions of both the Department staff and the Petitioner for the clarification of any point or proposal made.

8. After all presentations and questions by the Board, the Board may grant or deny the variance. In the alternative and in its discretion, the Board may defer action on a variance until a subsequent meeting.

I. No fee submitted with a request for variance shall be refunded under any circumstance.

[History: New 5/10/10]

**PART VII**

**PROCEDURE FOR FILING AND VERIFYING CITIZEN ODOR COMPLAINTS**

**1.701 Statement of Intent**

This rule sets forth the procedure by which citizen odor complaints shall be filed and verified and the procedure for informing the responsible persons or entities that complaints have been filed against them. As used in this rule, verifying means that an inspector determines that an odor is present in the outdoor air and identifies with reasonable certitude the facility or entity causing the odor. The determination of objectionability of the odor is left to the citizen who lodged the complaint.

[History: Renumbered 5/10/10]

**1.702 Procedures for Odor Complaint Verification**

A. Each complaint of odors received by phone will be recorded on a Department Odor Complaint form. The form shall be designed to facilitate the gathering of information, pertinent to a complaint, within the shortest possible time. Any changes made to the Odor Complaint Form shall be an agenda item at the Odor Committee meeting prior to their implementation. The determination of objectionability of the odor shall be left to the citizen who lodges the complaint. The Department shall determine why, if possible, the complainant finds the odor objectionable. The following questions may be posed to the complainant to assist in this determination:

1. Is this odor irritating, annoying or offensive to you?

Y\_\_\_\_ N\_\_\_\_ Describe:

2. Is the odor injurious to your health?

Y\_\_\_\_ N\_\_\_\_ Describe:

3. Is the odor injurious to plant or animal life?

Y\_\_\_\_ N\_\_\_\_ Describe:

4. Does the odor interfere with the enjoyment of property?

Y\_\_\_\_ N\_\_\_\_ Describe:

5. Does the odor interfere with the use and enjoyment of property?

Y\_\_\_\_ N\_\_\_\_ Describe:

6. Does the odor interfere with the conduct of business?

Y\_\_\_\_ N\_\_\_\_ Describe:

B. If the complainant has specifically identified (not a generic identification, e.g., chemical plant, kraft pulp mill) the source (facility) causing the objectionable odor, the Department will notify the source (facility) that a complaint has been filed prior to or during, the complaint investigation.

Notification will be made by telephone to a number provided by the source. Notification will consist of general location of the odor, suspected source (facility), odor description and time received. If telephone notification is unsuccessful, through no fault of the Department, no further notification will be made.

If later, upon investigation, the reported source (facility) is verified by the investigator as the cause of the complaint, notification under Board Rule 1.702.J, below, will not be made.

C. If the odor is ongoing, the investigator will proceed directly to the reported location of exposure. The investigator will stop, get out of the car and determine the presence or absence of a detectable odor in the air. The investigator will note the descriptive character of the odor, the intensity (faint, moderate, strong) and the time. The investigator will next measure and record meteorological data using portable, hand-held instruments carried for this purpose.

D. After recording initial data as described above, the investigator will attempt to interview the complainant, if the complainant is available on or near the scene of the reported exposure.

E. The investigator will survey the general vicinity of the reported exposure, note any odors detectable in the general vicinity and look for any small localized sources consistent with the character of the odor reported and/or noted at the complaint site; for example, animal pens, garbage piled in or near the street, anything being burned, small water or sewage treatment plants, small facilities such as garages, paint shops, etc.

F. If no odor has been detected within a general vicinity of the reported site, the investigator will close the investigation.

G. If an odor has been noted and does not seem to be from a small, localized source (as characterized in Board Rule 1.702.E, above), the investigator will proceed to the probable odor source, based upon his/her general knowledge of the area, the character of the odor previously noted, and the prevailing winds.

H. Upon arrival, the investigator will conduct a survey upwind and downwind of the facility, noting any odor detectable downwind beyond the property line of the facility, which has the same odor description as that of the odor detected in the area of exposure.

I. Ambient and olfactory data pertaining to an odor complaint, i.e. odor description, odor intensity and meteorological data, must be gathered within four (4) hours of the complaint. Other data necessary for the validation of the complaint may be gathered before or after the passage of the four (4) hour period.

J. Immediately upon completion of the field investigation, the investigator will notify the alleged source of the finding of the investigation. Such notification may be made by phone, or in person. Notification will consist of general location of the odor, suspected source (facility), odor description and time received. It is the responsibility of the source owner to make provisions for the receipt of telephone or personal notifications and to inform the Department of such provisions.

K. Upon completion of the investigation, the investigator will promptly document the findings on the complaint form, while details are still fresh in mind.

L. The completed complaint form shall be given to the supervisory personnel for review. If the odor complaint is validated, the source owner will be advised in writing on a monthly basis. The written notification must be postmarked no later than the fifteenth day of the month for validated complaints received during the previous month. Copies of the validated complaints shall be enclosed with the monthly notification.

[History: Renumbered 5/10/10; Amended 11/19/12]

**1.703 Training**

Training shall be provided to the Department complaint investigators in the determination of odor intensity and odor description. Procedures utilized for training the investigators shall be documented and be made available to the public upon request. Records of training received shall be maintained and shall be available upon request.

[History: Renumbered 5/10/10]

**1.704 Use of Meteorological Instruments**

Measurements of temperature, relative humidity, wind speed and wind direction made in the course of an odor investigation must be done in accordance with methods and with the aid of instruments, described in the Standard Operating Procedures (SOP) manual. The SOP manual shall reflect current procedures utilized by the investigators, and must be kept updated.

[History: Renumbered 5/10/10]

**1.705 Odor Episodes**

In the event of an odor episode that results in odor complaints from households in close proximity, the investigator may elect to perform one investigation in his attempt to validate all the complaints. In such an event, a single notification to the culpable source, by phone or in person, will suffice as notification for the entire group of complaints.

[History: Renumbered 5/10/10]

**1.706 Safety**

Investigation of odor complaints shall be conducted so as not to jeopardize the safety of the investigator.

[History: Renumbered 5/10/10]

**DONE AND ORDERED** This \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2012, at the regular meeting of the Environmental Protection Board, City of Jacksonville.

**ENVIRONMENTAL PROTECTION BOARD**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STEVEN JENKINS, CHAIR