



Response to Public and Employee Comments on Auditor's Office Proposed Administrative Rules

December 20, 2017

This document contains public and employee comments and questions received on the Auditor's Office proposed administrative rules on human resources and procurement during the Nov. 7 through Dec. 11 comment and review period. Responses and any resulting changes to the rules are noted. Comments regarding clerical errors, grammar, and minor mistakes have been excluded. All comments received on the proposed rules are public records and are available on request from Management Services.

Comments on Proposed Auditor's Office Administrative Rules – Human Resources

General Feedback

Comment: Do any of these rules apply also the elected City Auditor and City contractors hired by the Auditor's Office?

Response: The Auditor is subject to the rules to the same extent that all elected officials are subject to Human Resources rules. Elected officials are ultimately accountable to the public.

Contractors are not City employees and are not subject to these rules. Expectations and rules that are required of contractors are detailed in their specific contracts.

Rule 1.01 Duties & Authority of the Auditor's Office

Comment: One question asked for clarification about whether represented employees' compensatory and/or behavioral rules are covered by the Auditor's Office Administrative Rules or their labor contracts.

Response: Represented employees will continue to be governed by both their union contracts and City HRARs.



Comment: One comment suggested the word “provided” instead of “negotiated” to avoid confusion with union negotiations in a statement regarding personnel benefits in this rule.

Response: The word “negotiated” was replaced with “provided” in the sub section on Authority of the City Auditor (pg 1).

Comment: One commenter suggested the statement regarding administrative rules on pg 2 should make clear who approves them for the office.

Response: The words “approves” was added to the first part of the sentence in sub section Authority of the City Auditor (pg 2)

Comment: There was one question and one comment regarding “Management Services” in various places throughout the rules and what it refers to specifically.

Response: Management Services throughout the rules refers to the Auditor’s Office division. For clarity, a definition of Management Services was added to this rule (pg 1).

Rule 1.02 Auditor’s Office Administrative Rule Process

Comment: One question asked about the definition of Administrative Rules (A) and whether the bullets in the definition of Administrative rules were required for the definition to hold.

Response: Yes, all the bullet points in this definition do apply. Some leeway is given to the Auditor in the previous section regarding variation depending on the rule, however. For clarity, “in general” was added to A. Administrative Rules (pg 1).

Comment: One commenter found the last sentence in C. General Rulemaking regarding guidance confusing.

Response: The last sentence in C. General Rulemaking was reworded as follows: “Guidance attached to Auditor’s Office administrative rules are not considered rules and are not subject to these General Rulemaking procedures” (pg 1).

Comment: One commenter asked how frequently the City Auditor will review the rules and if it would be at least once during the Auditor’s term.

Response: There will be certain factors requiring continual review of the rules to maintain a parallel personnel system, as required by the City Charter. For example, the Auditor’s Office must monitor changes to the City’s HRAR’s and state and federal laws to ensure compliance. No proscriptive time frame for a review is established in this rule, however.

Rule 1.04 Personnel Records

Comment: One commenter expressed confusion about what information in the records are “confidential”. Commenter suggested that definitions for each type of record and whether they are confidential be specifically listed in the rule.

Comment: One commenter asked where training records are to be kept for professional development/certification records (pg 1).

Comment: One commenter asked if employees have the same right to inspect their bureau personnel file kept by the office as they do their official personnel file (pg 2).

Comment: One commenter asked what happens to “convenience copies” of personnel files and how and by whom they are retained if an employee is transferred to another part of the City or if there is impending legal action (pg 3)

Comment: One commenter asked what happens to the file of an Auditor’s Office employee separated from City Service.

Response to all of the above:

All personnel files are kept confidential and employees have the right to inspect their files at any time. Professional development/training records should be maintained by the employee or follow division rules. Convenience copies can be destroyed when an employee leaves Auditor’s Office employment. There are procedures in place to preserve records if a legal hold is issued. Some records are held by the Auditor’s Office, while others, such as Worker’s Compensation and Benefits information, are held by the City office that administers such programs. Records are retained for the length of their retention period. This administrative rule will be prioritized for further review and amendment once the Auditor’s Office and the City have worked through procedures for recordkeeping and access in SAP and other systems.

Rule 1.06 Employee Medical Files

Comment: One commenter asked whether “Long-Term Disability” in the Tort Medical Records section means a Long-Term Disability legal claim and/or condition instead of the Long-Term Disability insurance benefit offered to the City staff (pg 1).

Response: The term refers to the legal claim in this sentence.

Comment: One commenter wondered how electronic medical records are handled in the Employment Medical Records Files and Storage section (pg 2).

Response: Electronic medical records are kept separate and protected.

Comment: One commenter questioned what happens to the employee Medical File of Auditor’s Office employees once they separate from City Service.

Response: The Auditor’s Office will retain files for the full retention schedule.

Comment: One commenter wanted to know if employees have access to their own Employment Medical Record File.

Response: Yes, employees may access their files.

Comment: One commenter pointed out that the responsible parties for OSHA investigations, Long-Term Disability applications, and the initiation of tort claims seemed inconsistent in the Tort Medical Files subsection (pg 4).

Response: City Risk and the Bureau of Human Resources have responsibility in this area, not the Auditor's Office. This section was changed to reflect it is not the Auditor's Office responsibility to retain these records.

Comment: One employee asked Drug & Alcohol testing required by 49 CFR Part 40 apply to the Auditor's Office (pg 5)?

Response: No positions in the Auditor's Office are currently affected by this.

Rule 1.07 Time Review and Approval

Comment: One commenter asked who reviews and approves the City Auditor's time.

Response: Elected Officials do not enter time in SAP, so there is no approval mechanism for them.

Comment: One commenter suggested that in the sub section on Documentation and Accountability – the Bureau of Human Resources will likely continue to provide payroll transaction cycle controls to the external financial auditors, with Human Resources being the go-between to the Auditor's Office for payroll process documents (pg 2).

Response: To clarify, this section was replaced with the following sentence: "Management Services shall document the Auditor's Office time review and approval process and make this information available to BHR and external financial auditors on request."

Rule 3.15 Civil Service Appeals

Comment: One commenter suggested that appeals from examinations under sub section Types of Appeals, may not apply to the Auditor's Office since the "classified service" is the Civil Service (pg 1).

Response: The section is relevant because the Auditor's Office now has its own classified service, which is the functional equivalent of the City's.

Comment: One commenter was concerned about the appearance and actual independence and impartiality in the selection of the Hearings Officer in the appeals process and wondered if the Auditor's Civil Service Board Hearing's Officer was selected, hired, and paid by the Auditor.

Response: Please see the rule for a description of the selection process for Hearings Officer(s). A panel of employees – represented, non-represented and at will – will select the Hearings Officer (s).

Note: this comment was received prior to this rule being posted on the website.

Rule 4.08 Social Media

Comment: One commenter pointed out that Twitter increased the number characters in tweets and the rule may want to be less rigid in its definitions to reflect this.

Response: This section on Twitter was changed to clarify a tweet may contain a “limited number of characters”.

Rule 4.11 Inclement Weather

Comment: One commenter suggested this rule provide more flexibility to Auditor’s Office leading to easier travel and more sensible policies. Specifically, commenter suggested that the Auditor have the same authority as the Mayor in excusing employees from work during inclement weather under the Purpose sub section (pg 1).

Response: The Auditor’s Office administrative rules must be consistent with City rules and cannot confer benefits on Auditor’s Office employees that are not available to other City employees. The Mayor has the authority to make decisions about closure of City offices, including Auditor’s work sites.

Comment: One commenter was confused about the following sentence under the sub section Attendance and Inclement Weather Rules: “Auditor’s Office rules may not allow for pay for time not worked”.

Response: This sentence is consistent with the City’s rule and means that we cannot pay people for time they did not work unless they are on leave or the City is closed. The Mayor may still close City offices and tell employees not to come to work, although they will be paid.

Comment: One commenter was concerned about employees with pre-planned leave being penalized when all employees are told to stay home for inclement weather. Those that pre-plan their leave get charged accrued leave, while others who waited do not.

Response: Pre-planned leave that occurs when the City is closed must be recorded as leave and is not a penalization of the employee. If the City closes, the employee’s status on that day (on sick leave, vacation, FMLA leave, regular status, etc.) stays in place. The paid time off when an employee is told not to come to work is not a benefit, but a circumstance of the emergency.

To address the concern about those who pre-plan to stay at home during a weather event because they know they will have trouble getting in to work, we suggest discussing with your supervisor that you are planning on coming in, weather permitting, but if you are unable to come in and the City is open, you

will take a vacation day. If you have a telework agreement with your supervisor, that is a good option for dealing with inclement weather without taking vacation time.

Rule 6.11 Search and Rescue, Disaster and Civil Defense

Comment: One commenter suggested inclusion for the Portland Bureau of Emergency Management's Emergency Coordination Center responder program to this rule.

Response: We cannot add this program without losing the parallel to the City's HRARs and creating benefits for Auditor's Office employees that are not available to others. This is an option that likely should be added to the City's HRARs as well as the Auditor's in the future.

Rule 9.01 Employee Training and Development

Comment: One commenter pointed out that the attachment with mandatory trainings was out of date with the Bureau of Human Resource's required trainings.

Response: The most up to date version of the City's required trainings in the parallel HRAR rule was reviewed and the Payment Card Industry standard training and schedule for trainings were updated.

Rule 9.01 Employee Training and Development

Comment: One commenter questioned whether domestic partners were also covered under the sub section on Life Insurances.

Response: Yes. "Domestic partner" was added to this section to clarify.

Rule 10.01 General Benefits

Comment: One commenter questioned the Home Ownership Program's "new" requirement and asked about a property limit.

Response: The Auditor's Office doesn't administer this program; please check the program website for details.

Comment: One commenter pointed out that the CityShape Fitness Centers no longer exist.

Response: This section was deleted.

Comments on Proposed Auditor's Office Administrative Rules - Procurement

General Feedback

Comment: One commenter did not understand why the Auditor needs these rules and suggested it was a move backward in terms of transparency and making sure that favoritism is not used in awarding services or contracts. Commenter detailed a past negative experience with City contracting.

Response: No response to this comment. Voters approved the change.

Purpose and General Provisions

Comment: One commenter asked if there was a maximum dollar amount for Professional Technical, and Expert services contracting

Response: There are dollar thresholds throughout the PTE manual, so certain solicitation processes can only be used relative to contracts with certain dollar amounts. But overall there is no dollar limit.

Authority

Comment: One commenter asked if the provisions under the authority section delineating budget requirements in the Auditor's Office for solicitations would delay contracting until a budget was passed by Council for the next fiscal year (pg 2 Section A.1).

Response: No, the Auditor's Office budget includes annual funding for most ongoing contracts, such as those for the external audit, captioning services, lien search services, outside review of officer involved shootings, etc. These annual amounts mean that multiyear contracts can be entered into without concern. If the Auditor determines a new need for contracted services, funding for that contract will need to be added to the budget by Council or the Auditor will need to reallocate current resources to that contract. Either way, the budget availability would be covered.

Comment: One commenter wondered about limits referenced in the Authority Sub section A. 3. were governed by state law or City Charter (pg 2).

Response: State law addresses the process for selecting a vendor or a consultant or a contractor to enter into a contract with the City. State law does not address who may approve a contract with that ultimate vendor, consultant or contractor – it leaves this up to the City to determine. The City's Charter at Section 8.04 generally requires all contracts greater than \$20K to be in writing and requires Council to authorize through an ordinance who has the authority to bind or commit the City to the contract. PCC 5.33.040 is the codification of the ordinance that places the limits described in the comment (>\$500K

and >25%). Any contracts below these limits City staff may execute without additional council approval to bind the City to the contract; conversely, Council must approve contracts that exceed these limits.

Offer Evaluation and Award

Comment: One commenter asked what the definition of “Advantageous” was as used in this section under 1. Evaluations c. and 2. Awards b. and c. (pg 3).

Response: This word is defined in Portland City Code Section 5.33.010 as follows:

A. 2. Advantageous: In the City’s best interests, as assessed according to the judgment of the City.

Protests

Comment: One commenter asked in addition to Portland City Code Section 5.33.770 as cited in this paragraph, would 5.33.790 Appeal to Board also apply (pg 4)?

Response: Subsections 780 and 790 refer respectively to the power of the appeals board and the process of filing an appeal with the appeals board. Neither of which will apply to appeals of Auditor procurement. This citation was changed to read “. . . Sections 5.33.700 through 5.33.790.” in the Protests sub section (pg 4).
