

Agenda No. 311

ORDINANCE NO.

*Amend Hearings Office Code to update and clarify procedures
(Amend Code Title 22)

The City of Portland ordains:

Section 1. The Council finds:

1. City Code Title 22 establishes requirements for administrative hearings conducted by the City's Code Hearings Office.
2. Various provisions in Title 22 should be updated to address the Hearings Office's new electronic case management system, delete filing fee requirements, explicitly authorize the Hearings Officer to postpone hearings due to City closures or emergencies, remove gender-specific language, correct typographical errors, and make minor style edits to promote consistency.

NOW, THEREFORE, the Council directs:

- A. Code Title 22 is amended as shown in Exhibit A.

Section 2. The Council declares that an emergency exists because delay will prevent immediate implementation of needed administrative changes; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Introduced by
Mayor Ted Wheeler

Bureau
Management and
Finance
Hearings Office

Prepared by
William Guzman

Date Prepared
April 13, 2021

Requested Council Date
May 5, 2021

Requested Agenda Type
Regular 15 minutes

Date Filed with Clerk
April 27, 2021

Passed by Council:

MARY HULL CABALLERO
Auditor of the City of Portland

Action Taken:

By

Deputy

Commissioners voted as follows (Yea or Nay)

Rubio -

Ryan -

Hardesty -

Mapps -

Wheeler -

TITLE 22 - HEARINGS OFFICER

Chapter 22.01 - PURPOSE

22.01.010 Purpose.

The purpose of this Title is to provide for the prompt, effective, and efficient enforcement of the Portland City Code so as to carry out the policies of the City of Portland as they are embodied elsewhere in this Code; to provide a fast, fair, and impartial adjudication of the alleged City Code violations; and to provide persons adversely effected by administrative determinations and decisions with an effective and, impartial appeal and review of the legality and appropriateness of the determination.

Chapter 22.02 - CODE HEARINGS OFFICER

22.02.010 Established.

The office of Code Hearings Officer is hereby created. The Code Hearings Officer shall act on behalf of the Council in considering and applying regulatory enactments and policies pertaining to the matters set forth in other sections of this Title. The Code Hearings Officer shall be appointed in conformance with the Civil Service rules of the City.

22.02.020 Jurisdiction.

The Code Hearings Officer shall have jurisdiction over all cases submitted in accordance with the procedures and under the conditions set forth in this Code.

22.02.030 Definitions.

A. "City" means the City of Portland's Bureau responsible for initiating the Code Hearing request.

BA. "Code Hearings Officer" means the Code Hearings Officer appointed pursuant to 22.02.010 and any other person designated and appointed by the Code Hearings Officer to act as Code Hearings Officer in a particular proceeding or group of proceedings.

C. "Ex Parte communication" means a direct or indirect communication about a code enforcement case pending before a Hearings Officer, between the Hearings Officer and a party to the case or their representative, which occurs outside of a public hearing. Ex parte communications do not include communications between:

1. The Hearings Officer and any person employed or contracted by the Hearings Office.

2. The Hearings Officer and the Hearings Office's legal counsel.

3. Hearings Office staff (excluding the Hearings Officer) and City staff or other participants regarding procedures or for verification of evidence in record.

D. "Mail" unless otherwise specified, means electronic mail (email) or first-class United States Postal Service mail delivery service.

EB. "Party" means:

1. The City of Portland.
2. Any person named by the City as a Respondent in the complaint.
3. Any person requesting and entitled to an appeal hearing pursuant to Chapter 22.10.
4. Any person requesting to participate at the hearing as a party or a limited party which the Code Hearings Officer determines both has an interest in the result of the proceeding or represents a public interest in such result and that the identified interest is not already adequately represented by one of the current parties.

F. "Received" means the date and time a document is recorded as received by the Hearings Office; except that a document delivered to the Hearings Office after regularly scheduled business hours or on a Saturday, Sunday, or official City holiday or closure will be deemed to have been received on the next business day at the start of business hours.

GC. "Respondent" means the party or parties who the City alleges, in the complaint, to have committed a violation of City Code or to be responsible for such violation.

22.02.040 Enforcement.

A. The City may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of the Code Hearings Officer, including, but not limited to, a suit or action to obtain judgment for any civil penalty imposed by an order of the Code Hearings Officer pursuant to Section 22.05.010 A.5. and/or any assessment for costs or penalties imposed pursuant to Section 22.06.010 C.

B. Unless authorized by the Code Hearing Officer, it is unlawful for any person to knowingly enter or remain in any building or structure that the Code Hearings Officer has ordered vacated pursuant to Subsection PCC 22.05.010 C.2. In addition to any civil penalties imposed pursuant to Subsection PCC 22.05.010 A.5., any person knowingly entering or remaining in such building or structure shall upon conviction be punished by a fine of not more than \$500, or by imprisonment not exceeding six months, or both.

Chapter 22.03 - CODE ENFORCEMENT PROCEDURES

22.03.010 Authority of the Code Hearings Officer to Adopt Rules, Procedures, and Forms.

A. In addition to any procedure set forth elsewhere in this Code, Code enforcement proceedings before the Code Hearings Officer shall be conducted in accordance with the procedure set forth in this Chapter. The Code Hearings Officer may promulgate rules and regulations, not inconsistent with this Chapter, concerning procedure and the conduct of hearings.

B. The Code Hearings Officer is authorized to adopt rules, procedures, and forms to implement the provisions of Title 22.

C. Adoption of Rules.

1. The Code Hearings Officer may adopt rules pertaining to matters within the scope of Title 22.

2. Prior to the adoption of any rule by the Code Hearings Officer, reasonable public notice of the proposed rules shall be given not less than 30 days prior to the adoption of such rules. Such notice shall include a brief description of the proposed rules, the location at which copies of the full text of the proposed rules may be obtained, and the method of submitting written testimony or comment regarding the proposed rules.

3. Prior to adopting the rules, the Code Hearings Officer shall review and consider all written testimony and comments received and may adopt the proposed rules, or modify or reject them. If a substantial modification of the proposed rules is made, no additional public notice need be given, but notice of the proposed modifications shall be given to all persons submitting written testimony or comments and all other persons requesting such notification, and a reasonable opportunity for additional written testimony and comment shall be provided.

4. Unless otherwise stated, all rules shall be effective upon adoption by the Code Hearings Officer and shall be filed with the Auditor's Office. Copies of all current rules shall be made available to the public upon request. If any person feels aggrieved by any such rule, ~~he or she~~ they may appeal to the Council for its amendment or repeal by filing with the Auditor a petition which shall be presented to the Council at its next regular meeting. But until amended or repealed by the Council, such rule shall be in full force and effect.

5. Notwithstanding Subsections 2_ and 3_ of this section, the Code Hearings officer may adopt interim rules without prior notice upon a finding that failure to act promptly will result in prejudice to the public interest or to the interest of affected parties.

Any rule adopted pursuant to this subsection shall be effective for a period of not more than 180 days.

22.03.020 Initiation of Proceeding.

A. A proceeding before the Code Hearings Officer may be initiated only as specifically authorized elsewhere in the Code.

B. Except as provided in Sections 22.10.030 and 22.20.010 of this Title, a proceeding before the Code Hearings Officer shall be initiated only by the City filing a complaint with the Office of the Code Hearings Officer in accordance with the procedures established on forms provided by that Office. The complaint shall contain:

1. The name(s) of the Respondent(s).
2. The address or location at which the violation is alleged to have occurred.
3. A short and plain statement of the alleged violations, including a reference to the particular statutes, rules, or regulations involved.
4. The nature of the relief sought by the City.
5. The City bureau(s) initiating the proceeding and the name, title, and signature of the person initiating the proceeding on behalf of the City.
6. Such other information as the Hearings Officer may require.

22.03.025 Setting of Hearings.

A. Upon filing of a complaint, the Code Hearings Officer shall specify a time, date, and place for a public hearing on the complaint and the matters alleged therein. A complaint shall be deemed filed upon it being Received by the Code Hearings Office in accordance with the Hearings Office's administrative rules.

B. The date set for hearing shall be not less than 14 days nor more than 30 days after the date the complaint is filed, except that the Code Hearings Officer may specify a date for hearing less than 14 days after the complaint is filed where it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person. The time frames set forth in this section are waived if the hearing is postponed.

C. The Code Hearings Officer may postpone, continue, set over, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown. The time frames set forth in Subsection 22.03.025 B. above are waived if the hearing is postponed.

D. The Code Hearings Officer may postpone or reschedule any hearing on their own motion when the Mayor of Portland or the Governor of Oregon declares an emergency and the Code Hearings Officer finds that the nature of the emergency prevents the Hearings Office from conducting a hearing. The time frames set forth in Subsection 22.03.025 B. above are

waived if the hearing is postponed or rescheduled.

22.03.030 Notice of Hearing.

A. The City shall give notice of the hearing, together with a copy of the complaint, a list of violations, statement of rights, and any participation instructions to the Respondent(s) and all other parties, not less than 10five calendar days prior to the date set for hearing except that the Code Hearings Officer may set a shorter period when it appears that the alleged violation poses an immediate and serious hazard to the public health, safety, or welfare or the life, health, safety, welfare, or property of any person. When the City is providing notice of the hearing by United States Postal Service mail, then 3 business days must be added to the deadline above.

B. The notice of hearing shall specify the time, date, and place set for the hearing.

C. Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by:

1. Personally delivering the notice to the party(ies), or
2. Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party(ies), or
3. Any method authorized by the Oregon Rules of Civil Procedure for the service of summons, or
4. Any other method, including electronic mail (email), when authorized by the hearings officer, by rule or otherwise.

5. If notice is given by United States Postal Service mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail.

D. Notice of the hearing and a copy of the complaint shall also be given to:

1. The tenants, residents, and lessees of any building, property, or structure if the City has requested in the complaint the vacation, closure, or demolition of the building, property, or structure or if the Code Hearings Officer determines that such vacation, closure, or demolition is a reasonably possible outcome of the proceeding.
2. Any other person who reasonably appears to have an financial interest in the property involved and who it reasonably appears may be adversely affected by any determination, decision, or order of the Code Hearings Officer.
3. Any person who has requested such notification. The Code Hearings Officer may

provide by rule, as provided by Section 22.03.010, for the manner and means of giving notice to such persons in a manner reasonably calculated to provide such persons with actual notice of the proceedings.

E. The failure of any person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the Code Hearings Officer.

22.03.040 Notice; Rights; Procedure.

A. Prior to the commencement of a contested hearing, the Code Hearings Officer shall inform each party to the hearing of the following matters:

1. A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens going forward with the evidence.
2. That a record will be made of the proceedings and the manner of making the record and its availability to the parties.
3. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the Code Hearings Officer.
4. Whether an aAttorney will represent the City in the matters to be heard and whether the parties ordinarily and customarily are represented by an aAttorney.
5. The ~~t~~Title and function of the Code Hearings Officer, including the effect of and authority ~~for~~of the Code Hearings Officer's determination.
6. In the event a party is not represented by an aAttorney, whether the party may, during the course of proceedings, request a recess if at that point the party determines that representation by an aAttorney is necessary to the protection of the party's rights.
7. Whether there exists an opportunity for an adjournment at the end of the party then determines that additional evidence should be brought to the attention of the Code Hearings Officer and the hearing is reopened.
8. If the Code Hearings Officer determines, upon a party's motion or sua sponte, that a party should bring additional evidence to the Code Hearings Officer's attention, the Code Hearings Officer will also announce the method for submission (a continued hearing or post-hearing submission), and whether there will be an opportunity for the other party to respond. The Hearings Office may provide represented parties with less latitude or leniency than pro se litigants. Whether there exists an opportunity after the hearing and prior to the final determination or order of the Code Hearings Officer to review and object to any proposed findings of fact, conclusions of law, summary of evidence, or order of the Code

Hearings Officer.

9. A description of the appeal or judicial review process from the determination or order of the Code Hearings Officer.

B. The information required to be given to a party to a hearing under Subsection A.(a) of this Section may be given in writing or orally before commencement of the hearing.

C. The failure to give notice of any item specified in Subsection A.(a) of this Section shall not invalidate any determination or order of the Code Hearings Officer unless on appeal from or review of the determination or order a court finds that the failure affects the substantive rights of the complaining party. In the event of such a finding, the court shall remand the matter to the Code Hearings Officer for a reopening of the hearing and shall direct the Code Hearings Officer as to what steps shall be taken to remedy the prejudice to the rights of the complaining party.

22.03.050 Hearings Procedure.

A. Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default. However, after issuance of a notice of hearing, no building occupied as a residential structure may be vacated based on an informal disposition unless approved by the Code Hearings Officer.

B. Parties may elect to be represented by counsel and to respond to and present evidence and argument on all issues involved.

C. An order adverse to a party may be issued upon default only upon a prima facie case made on the record before the Code Hearings Officer.

D. Testimony shall be taken upon oath or affirmation of the witness from whom received. The Code Hearings Officer may administer oaths or affirmations to witnesses.

E. The Code Hearings Officer shall place on the record a statement of the substance of any written or oral Ex Parte communications made to the Code Hearings Officer on a fact in issue during the pendency of the proceedings. The Code Hearings Officer shall notify the parties of the communication and of their right to rebut such communications.

F. The record in a proceeding before the Code Hearings Officer shall include:

1. All pleadings, motions, and intermediate rulings;
2. Evidence received or considered;
3. Stipulations;

4. A statement of matters officially noticed;
5. Questions and offers of proof, objections, and rulings thereon;
6. A statement of any Ex Parte communications on a fact in issue made to the Code Hearings Officer during the pendency of the proceedings;
7. Proposed findings and exceptions; and
8. Any proposed, intermediate, or final order prepared by the Code Hearings Officer.

G. A verbatim, written, mechanical, or electronic record shall be made on all motions, rulings, and testimony. ~~The record shall be transcribed for the purposes of court review pursuant to Section 22.04.010 unless the parties to such review waive the transcript. If the City prevails on such review, the reasonable costs of preparing the transcript, including such costs as are specified in Section 5.48.030 of this Code, shall be allowed as a part of the City's costs in such action. However, upon petition, a court having jurisdiction to review may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the Code Hearings Officer.~~

22.03.060 Depositions or Subpoena of Material Witness; Discovery.

A. On petition of any party, the Code Hearings Officer may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken via audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the witness' testimony, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this State and is unwilling to appear, the Code Hearings Officer may issue a subpoena, ~~as provided to require~~ theis appearance of the witness at the hearing or deposition before such officer.

B. The Code Hearings Officer may, by rule, prescribe other methods of discovery which may be used in proceedings before the Hearings Officer.

22.03.070 Subpoenas.

A. The Code Hearings Officer shall issue subpoenas to any party upon showing of general relevance and reasonable scope of the evidence sought. The hearings office may make available a form with the information required to make this showing. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, shall receive fees and mileage as prescribed by law for witnesses in civil actions. Unless a witness expressly declines payment of fees and mileage, the witness's obligation to appear is contingent on the payment of fees and mileage.

B. A subpoena may be served by a party, the party's attorney, or any other person who is 18 years of age or older. Service may be accomplished by personal service of a true copy of the subpoena upon the witness or an agent of the witness authorized to receive the subpoena; substituted service by leaving a true copy of the subpoena at a person's dwelling house or usual place of abode with a person over 14 years of age; office service by leaving true copies of the subpoena with a person who is apparently in charge of an office; or service by United States Postal Service mail if the witness consents to this method.

CB. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the person may be lawfully interrogated, the judge of the Circuit Court of any county, on the application of the Code Hearings Officer, or of a designated representative of the Code Hearings Officer or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from such court or a refusal to testify therein.

22.03.075 Discovery of Documents and Things

A. On petition of any party and a showing of the general relevance of the documents or things sought, the Code Hearings Officer may enter an order directing any party to produce and make available to the petitioning party to inspect and copy any documents or to inspect and copy, test, or sample any things which are in the possession of a party. The hearings office may make available a form with the information required to make this showing.

B. The order directing a party to produce and make available documents or things may require the petitioning party to pay the party producing documents and things that party's reasonable costs associated with such production.

C. The Code Hearings Officer shall not enter an order requiring a party to produce any document or thing which is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law.

22.03.080 Evidence.

A. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Erroneous rulings on evidence shall not preclude action by the Code Hearings Officer on the record unless the error is shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Code Hearings Officer shall give effect to the rules of privilege recognized by law. Objections to evidence may be received in written form or orally at the hearing on the record.

B. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in Subsection D of this Section, no other factual information or evidence shall be considered in the determination of the case.

Documentary evidence may be received in the form of copies of excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

C. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

D. The Code Hearings Officer may take notice of judicially recognizable facts, ~~and the Code hearings Officer may take official notice of as well as~~ general, technical, or scientific facts within the specialized knowledge of City employees. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

E. No sanction shall be imposed or order ~~be~~ issued except upon consideration of the whole record as supported by, and in accordance with reliable, probative, and substantial evidence.

22.03.090 Continuance of Tenancy.

After issuance of a notice of hearing, and until such time as the Code Hearings Officer issues his final decision, neither the Respondent(s) nor the bureau initiating the hearing shall take any action that results in the vacation of a building used for residential occupancy without the permission of the Code Hearings Officer, except that in cases where buildings are found to be imminently hazardous, the building official or Chief Fire Marshal may order the building vacated if no other means are available to eliminate the imminent hazard.

22.03.100 Proposed and Final Orders.

The Code Hearings Officer shall prepare and mail to all parties, a proposed order including findings of fact and conclusions of law. The proposed order shall become final on the date specified in the order, which date shall not be less than 14 days after such mailing, unless the Code Hearings Officer finds that an existing violation is imminently dangerous to the health, safety, or property of any person or of the public, in which case the order may specify an earlier date.

22.03.110 Orders.

A. Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

B. Unless otherwise stipulated, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact ~~supporting the findings as to each contested issue of fact~~ and as to each ultimate fact required to support the Code Hearings Officer's order. The findings of fact and conclusions of law may be orally stated on the record by the Code Hearings Officer and those findings and

conclusions incorporated in the written order by reference.

C. The Code Hearings Officer shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

D. Every final order shall include either a citation of the Oregon Revised Statutes or other applicable ordinances under which the order may be appealed or judicially reviewed.

22.03.115 Petitions For Reconsideration, Rehearing.

A. A party may file a petition for reconsideration or rehearing on a final order with the Code Hearings Officer within 30 days after the order is mailed.

B. The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by written argument. A motion for reconsideration cannot be used to expand the record as stated in Subsection F.

C. The Code Hearings Officer may grant a request for reconsideration if good and sufficient reason therefor appears. If the petition is granted, an amended order shall be issued. Good and sufficient cause may include, but is not limited to, any of the following: an intervening change in controlling law, a clear error of law, plainly incorrect or irrational reasoning, a failure to consider evidence, a need to prevent manifest injustice.

D. The Code Hearings Officer may grant a rehearing petition if good and sufficient reason therefor appears. The rehearing may be limited by the Code Hearings Officer to specific matters. If a rehearing is held, an amended order may be issued.

E. The Code Hearings Officer, at any time, upon its own motion, and upon a showing of due diligence, may set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order.

F. A motion for reconsideration cannot rely on new evidence (that is, evidence that was not previously submitted before the close of the record) unless the proponent of the evidence demonstrates the evidence was not reasonably discoverable with due diligence prior to the close of the record.

Chapter 22.04 - JUDICIAL REVIEW

22.04.010 Judicial Review.

A. Review of the final order of a Code Hearings Officer under this Title by any aggrieved party, including the City of Portland, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100. The Hearings Officer may modify this rule if jurisdiction exists elsewhere or as applicable laws may require. If a writ of review is filed, then an audio recording of the hearing will be delivered to the City Attorney's

Office.

B. If a transcript of the audio recording is requested, then the City Attorney's Office will fulfill this request. If the City prevails on such review, the reasonable costs of preparing the transcript, including such costs as are specified in Section 5.48.030 of this Code, shall be allowed as a part of the City's costs in such action. However, upon petition, a court having jurisdiction to review may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the Code Hearings Officer.

Chapter 22.05 – POWERS

22.05.010 Order to Comply; Abatement, and Repair.

A. The Code Hearings Officer may order a party found in violation of the Code of the City of Portland or any applicable rule or regulation issued thereunder to comply with the provisions of the Code or the applicable rule or regulation within such time as the Code Hearings Officer may by order allow. The order may require such party to: ~~do any and all of the following-~~

1. Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
2. Abate or remove any nuisance;
3. Change the use of the building, structure, or real property involved;
4. Install any equipment necessary to achieve compliance;
5. Pay to the City of Portland a civil penalty of up to \$1,000 per day or such greater amount as may be authorized by this Code or any rules or regulations adopted thereunder; or
6. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

B. In the event any party fails to comply with any provision of an order of the Code Hearings Officer, except a provision requiring the payment of a civil penalty only, the Code Hearings Officer may authorize the City to undertake such actions as the Code Hearings Officer may determine are reasonably necessary to correct the violation and/or eliminate or mitigate the effects thereof. The City's reasonable costs of such actions may be made a lien against the affected real property pursuant to Chapter 22.06 of this Title.

C. Where the Code Hearings Officer finds that there is a violation of any of the provisions of Title 24, 25, 26, 27, 29, or 31, the Code Hearings Officer, in addition to the powers set out in Subsections A. and B. above, may:

1. Authorize the Bureau of Development Services to act pursuant to Chapter 29.40 of the

this Code of the City of Portland;

2. Provided notice has been given to tenants, residents, and lessees as required by Subsection 22.03.030 D_, order a building or structure vacated or demolished when it reasonably appears that such measures are reasonably required to protect the health, safety, or property of the general public, the residents of the structure, or ~~that of adjacent~~ landowners and residents. Where vacation or demolition is ordered, the Code Hearings Officer may direct that the person found in violation of the Code undertake any and all interim measures as may be necessary;

3. Act as the Building Code Board of Appeals in a case already before ~~him~~ the Code Hearings Officer and which requires interpretation of Title 29 of this Code;

4. Require the party found in violation of this Code to prepare a cost estimate of the repairs made necessary to achieve compliance with the Code and the impact of these repairs will have on the cost of doing business and, if applicable, future rent levels. In assessing the cost estimate under this Subsection the Code Hearings Officer may require the person found in violation to contact public and private agencies, institutions, and other sources of property improvement funds to determine the availability of funds needed for repairs.

Chapter 22.06 – ASSESSMENTS

22.06.010 Assessments.

A. Costs incurred by the City of Portland for any actions authorized by the Code Hearings Officer pursuant to Subsection 22.05.010 B_ and C_ and any civil penalty imposed as a result of an order of the Code Hearings Officer shall be an assessment lien upon the property subject to the order.

B. If a residential structure is ordered vacated pursuant to Sections 22.05.010 C.2. or 29.60.070 of this Code and the City of Portland relocates the tenants of such property, then the cost incurred by the City for relocating the tenants as provided by ORS 90.450 shall be an assessment lien upon the property vacated and from which the tenants are relocated.

C. The bureau incurring such costs shall furnish a statement of such costs on the owner, in person or by United States Mail, postage prepaid and addressed to the owner(s) at the owner(s) residence or place of business, and shall file a copy of such statement for the Code Hearings Officer with proof of service attached. If no objection to such statement is filed with the Office of the Code Hearings Officer within 15 days from the date of service or mailing, the Code Hearings Officer shall certify such statement and forward the same to the Revenue Division who shall forthwith enter the same in the City lien docket.

1. If an objection to the statement is received within the 15-day period, the Code Hearings Officer shall schedule and hold an appeal hearing pursuant to Chapter 22.10. After the hearing, the Code Hearings Officer shall certify such statement, or so much of it as the Code Hearings Officer determines is correct and proper, and forward it to the Revenue Division who shall enter it into the City lien docket.

2. The Code Hearings Officer shall certify to the Revenue Division the amount of any civil penalty imposed under any order of the Code Hearings Officer, and the Revenue Division shall enter it into the City lien docket. The lien imposed for the civil penalty shall be in addition to any lien imposed for costs actually incurred by the City.

3. The bureau incurring costs or providing services may file separate statements for the costs and services furnished as each is incurred or provided.

4. Liens imposed pursuant to this Title shall be collected in all respects as provided for in Section 5.30.0250 Collection Process.

D. In addition to the lien imposed under this Section, any person found to be in violation of the Code of the City of Portland shall be personally liable for costs incurred by the City pursuant to Subsection 22.05.010 B₂ and C₂ and for any civil penalty imposed by order of the Code Hearings Officer. In cases of person found to be in violation of the Code of the City of Portland as owners of property, the persons shall be personally liable hereunder only if they have control of the property, the legal authority to correct the violation, and knowingly have committed the violation.

Chapter 22.10 - APPEALS TO THE CODE HEARINGS OFFICER

22.10.010 Definitions.

For the purpose of this Chapter:

A. "City bureau" means and includes any bureau, division, Board, Committee, officer, agent, or employee of the City of Portland.

B. "Decision or determination" means and includes any decision, determination, order, or other action of any City bureau. Decisions or determinations do not include any action, decision, determination, or order that is subject to the review procedures set forth in Title 33 or Chapter 16.30 of the Code.

C. "Ex parte communication" means a direct or indirect communication about a code enforcement case pending before a Hearings Officer, between the Hearings Officer and a party to the case or their representative, which occurs outside of a public hearing. Ex parte communications do not include communications between:

1. The Hearings Officer and any person employed or contracted by the Hearings Office.
2. The Hearings Officer and the Hearings Office's legal counsel.

3. Hearings Office staff (excluding the Hearings Officer) and City staff or other participants regarding procedures or for verification of evidence in record.

D. "Mail" unless otherwise specified, means electronic mail (email) or first-class United States Post Office mail delivery service.

E. "Received" means the date and time a document is recorded as received by the Hearings Office; except that a document delivered to the Hearings Office after regularly scheduled business hours or on a Saturday, Sunday, or official City holiday or closure will be deemed to have been received on the next business day at the start of business hours.

22.10.020 Jurisdiction.

- A. Whenever, pursuant to any portion of this Code, a person has the right of appeal to the Code Hearings Officer from any City bureau decision or determination, such appeal shall be in accordance with the procedures and under the conditions set forth in this Chapter.
- B. No person shall have a right of appeal to the Code Hearings Officer unless the right of appeal is expressly provided for in this Code.

22.10.025 Notification of Right to Appeal; Enforcement; Remedies.

- A. City bureaus shall give notice of the right to appeal to the Code Hearings Officer in accordance with Section 3.130.020.
- B. Where the Code, in accordance with Section 22.10.020, provides that an administrative appeal as defined in Section 3.130.010 is to be decided by the Code Hearings Officer, the Code Hearings Officer shall have the authority to enforce the requirements of Section 3.130.020 and may adopt evidentiary requirements by rule.
 1. If, in deciding such an administrative appeal, the Code Hearings Officer finds that a City bureau has failed to provide notice in accordance with Section 3.130.020, the Code Hearings Officer may order a just and reasonable remedy related to the failure to provide notice, including remanding the administrative act that is the subject of the administrative appeal, reducing any fees and penalties associated with the administrative act, staying the effect of the administrative act pending the outcome of the administrative appeal, or invalidating the administrative act if failure to provide notice materially prejudiced the appellant. Nothing in this Subsection shall be construed to allow the Code Hearings Officer to award monetary damages to the appellant.

22.10.030 Initiation of Appeal.

A. Unless otherwise specified in this Code, a request for an appeal hearing shall be filed within 10 business days after the date of the decision or determination. The Code Hearings Officer may waive this requirement for good cause shown.

B. The request for an appeal hearing shall be filed directly with the Code Hearings Office, in accordance with the procedures established by the office. The request shall be in writing and shall contain:

1. a completed appeal form by either completing the questions in the online case management system or by completing and submitting an appeal form the Hearings Office makes available; ~~the Code Hearings Officer shall create by rule;~~
2. a copy of the decision or determination appealed from and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper; and
3. any other information as the Code Hearings Officer may by rule require.

C. By presenting to the Code Hearings Officer an appeal or other document ~~paper~~ – whether by signing, filing, submitting or later advocating it – a person or party certifies that to the best of the person’s or party’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. the appeal or paper is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase costs;
2. the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
3. the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
4. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

D. The Code Hearings Officer shall not charge any ~~adopt by rule no more than a nominal~~ filing fee for an appeal hearing. ~~Except for Section 24.55.200 of Code, this fee supersedes and replaces all other fee schedules to bring an appeal before the Code Hearings Officer provided for elsewhere in this Code or administrative rule. Filing fees are nonrefundable, and are paid directly to the Code Hearings Office.~~

~~1. The Code Hearings Officer may waive the filing fee if the party seeking the waiver demonstrates an inability to pay due to financial hardship. The Code Hearings Officer shall adopt rules to implement the fee waiver application procedure.~~

22.10.040 Hearings.

A. ~~Upon receipt of~~ Once a request for hearing is Received, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 business days after the Code Hearings Office Received receipt of such request.

B. Notice of the time, date, and place of hearing shall be given to the person requesting the hearing and to the City bureau whose decision or determination is being appealed. If an attorney communicates to the Hearings Office in writing that they represent the Appellant in the matter then Notice shall be given to the attorney. Any person who reasonably appears to have an interest in the outcome of the appeal hearing may submit a written request to appear as a limited party to the Hearing. If the request is granted, then Notice shall be given to the person. ~~Notice shall also be given to any person who reasonably appears may be adversely affected should the decision or determination not be sustained after hearing. The Code Hearings Officer may provide by rule for the manner of providing notice to such persons.~~

C. The time for hearing may be extended by the Code Hearings Officer for good cause shown or due to a City closure, or Mayor or Governor declared emergency, upon such terms and conditions as the Code Hearings Officer shall deem just and appropriate.

22.10.050 Hearings Procedure.

A. Hearings shall be conducted in accordance with the procedures set forth in Sections 22.03.050 to 22.03.115 of this Title.

B. With the consent of all parties, the Code Hearings Officer may determine the matter without hearing upon the record.

C. The Code Hearings Officer may sustain, modify, reverse, or annul the decision or determination appealed from or the Code Hearings Officer may remand the decision or determination to the City bureau for such reconsideration, additional consideration, or further action as the Code Hearings Officer may direct.

1. Whenever a City decision or determination is sustained on appeal and it is for recovery of money or civil penalties, the Code Hearings Officer may, upon request, shall award post-judgment interest at the rate set by ORS 82.010(2), unless the rate is otherwise specified in this Code.

D. Upon motion of a party or upon the Code Hearings Officer's own motion, the Code Hearings Office may impose sanctions against a person or party who violates Subsection 22.10.030 C.

1. Upon a motion for sanctions, the Hearings Officer shall direct the person or party to appear before the Code Hearings Officer and show cause why sanctions should not be imposed.

2. The evidence that a person or party violated Subsection 22.10.030 C. must be clear and convincing to authorize the imposition of sanctions.

3. Sanctions under this Section may include amounts sufficient to reimburse the City bureau for costs and other expenses incurred by reason of the Subsection 22.10.030 C. violation, prejudgment interest at the rate set by ORS 82.010(2) unless the rate is otherwise specified in this Code, and a civil penalty not to exceed \$10,000 sufficient to deter repetition of the violation or comparable violations by others similarly situated.

4. An order imposing sanctions under this Section must describe the sanctioned conduct, explain the basis of the sanction, and state the amount of the sanction.

E. The decision or determination appealed from shall be reviewed de novo by the Code Hearings Officer.

22.10.060 Nature of Determination.

A. The determination of the Code Hearings Officer is a quasi-judicial decision and is not appealable to Council; appeals from any determination by the Code Hearings Officer shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100. If a writ of review is filed, then an audio recording of the hearing will be delivered to the City Attorney's Office.

B. If a transcript of the audio recording is requested, then the City Attorney's Office will fulfill this request. If the City prevails on such review, the reasonable costs of preparing the transcript, including such costs as are specified in Section 5.48.030 of this Code, shall be allowed as a part of the City's costs in such action. However, upon petition, a court having jurisdiction to review may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the Code Hearings Officer.

Chapter 22.20 - VIOLATIONS UNDER CIVIC STADIUM GOOD NEIGHBOR AGREEMENT

22.20.010 Authority.

A. The Code Hearings Officer is authorized to hear and determine complaints from the Goose Hollow Foothills League and the Northwest District Association brought pursuant to the terms of the Civic Stadium Good Neighbor Agreement and to impose orders and penalties consistent with the terms of that Agreement.

B. Any party to the Civic Stadium Good Neighbor Agreement may appeal a decision of the Code Hearings Officer to the City Council by filing a notice of appeal within 30 days from the date of the ~~of the~~ decision. The notice shall be filed with the Auditor's office and shall be mailed by first class mail to all other parties to the Agreement. The appeal will be conducted on the record before the Code Hearings Officer and not de novo.

IMPACT STATEMENT

Legislation title: *Amend Hearings Office Code to update and clarify procedures (Ordinance; amend Code Title 22)

Contact name: William Guzman, Chief Hearings Officer

Contact phone: (503) 823-7307

Presenter name: William Guzman, Chief Hearings Officer

Purpose of proposed legislation and background information:

This legislation proposes amendments to Code Title 22, which governs the City's Hearings Office. The proposed amendments seek to address the Hearings Office's new electronic case management system, delete filing fee requirements, explicitly authorize the Hearings Officer to postpone hearings due to City closures or emergencies, remove gender-specific language, correct typographical errors, and make minor style edits to promote consistency.

Financial and budgetary impacts:

None.

Community impacts and community involvement:

None.

100% Renewable Goal:

The proposed legislation reflects the Hearings Office's implementation of a new electronic case management system, which will significantly reduce the use of paper documents and files.

Budgetary Impact Worksheet

Does this action change appropriations?

YES: Please complete the information below.

NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount