



## Hearings Office

### City of Portland

1900 SW 4<sup>th</sup> Avenue, Room 3100, Portland, OR 97201 phone: 503.823.7307  
www.portlandoregon.gov/hearings fax: 503.823.4347  
email: HearingsOfficeClerks@portlandoregon.gov



## **RULES OF THE CITY OF PORTLAND HEARINGS OFFICE ADM-9.05 – APPEALS TO THE CODE HEARINGS OFFICER**

*Adopted by the Chief Hearings Officer Pursuant to Rulemaking Authority*

ARB-ADM-9.05

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### **A. Purpose and Authority**

The Code Hearings Office (Hearings Office) is responsible for reviewing City of Portland Bureau decisions and determinations in appeal cases filed under [Chapter 22.10](#) of the Portland City Code. The purpose of an appeal to the Hearings Office is to determine if the appealed decision or determination is factually and legally correct, based upon the evidence available to the City Bureau making that decision or determination. This rule sets forth guidance for implementing [Code Chapter 22.10](#) and for conducting prompt, efficient, fair, and impartial adjudications of appeal cases.

[Code Section 22.03.010](#) authorizes the Hearings Office to adopt rules to implement the provisions of Code Title 22.

### **B. Applicability**

These rules apply solely to appeal cases filed with the Hearings Office under [Code Chapter 22.10](#).

### **C. Modification or Waiver; Conflicts**

1. The Hearings Officer may modify or waive any of these rules, in the interest of fairness or justice and for good cause shown, unless such modification or waiver is in conflict with [Code Chapter 22.10](#).
2. In the event of any conflict between these rules and applicable requirements set forth in the Portland City Code, the Code provisions will prevail.

## D. Definitions

For purposes of these rules:

1. “Administrative review” means a review process that gives a person disputing a City Bureau action or decision an opportunity to request a meeting and present evidence and arguments directly to the City Bureau. At the conclusion of the administrative review, the City Bureau issues a written decision or determination.
2. “Appeal Hearing Request Form” means the Hearings Office’s [form](#) used for appeal hearing requests, whether it is in hardcopy or has been submitted through the [Hearings Office’s electronic case management system](#).
3. “Appellant” means a person or entity granted a right to appeal a City Bureau decision or determination to the Hearings Officer.
4. “Continue” means to adjourn a hearing that is in progress and order that the hearing be completed on another date and time. For example, the Hearings Officer may “continue” a hearing that is taking longer than scheduled or expected to another date and time to give the parties enough time to present all of their evidence. The Hearings Officer has the sole discretion to continue a hearing.
5. “Decision or determination” means and includes any decision, determination, or other written action by a City Bureau that provides for an appeal to the Hearings Officer.
6. “De novo” means that the Hearings Officer will review and weigh all the evidence in the record and make findings related to the evidence and law, without deferring to the City Bureau’s findings of facts nor the Bureau’s decision or determination.
7. “Discovery” means the exchange of evidence among the parties to the case.
8. “Disruptive conduct” means conduct that interferes with the normal hearing process, as determined by the Hearings Officer.
9. “Ex parte communication” means a direct or indirect communication about an appeal case pending before a Hearings Officer, between the Hearings Officer and a party to the case, which occurs outside of a public hearing. *Ex parte* communications do not include communications between:
  - a. The Hearings Officer and any person employed by the Hearings Office.

- b. The Hearings Officer and the Hearings Office’s legal counsel.
  - c. Hearings Office staff (excluding the Hearings Officer) and City staff or other participants regarding procedures or for verification of evidence in record.
10. “Interpreter” means a person with sufficient fluency to communicate with a party or witness who does not speak English. An interpreter is responsible for accurately translating the party or witness’ statements into English during the hearing, and for translating what is said during the hearing into the language used by the party or witness. “Interpreter” also refers to a person who assists or aides another person due to a disability.
11. “Mail” means electronic mail (email) or first-class United States Post Office mail delivery service.
12. “Party” means the Appellant, the Appellant’s representative(s), and the City Bureau and its representative(s).
13. “Postpone” means to reschedule a hearing for another date and time.
14. “Received” means the date and time a document is time-stamped 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.
15. “Timely” means that a document has been received by the Hearings Office within the time limits established by [Code Chapter 22.10](#) or other applicable deadline. The Hearing Office time stamp will be used to establish conclusively whether or not a document was received timely.

**E. Notice to Appellant of Right to Appeal**

[Code Section 3.130.020 A.](#) requires City Bureaus to provide timely notice to Appellants of the right to appeal an administrative act through an administrative appeal. A sample notice for administrative appeals heard by the Hearings Office is set forth in Appendix A.

## INITIATING AN APPEAL HEARING

### F. Appeal Hearing Requests

1. A person disputing the decision or determination of a City Bureau may request an appeal hearing by submitting a completed [Appeal Hearing Request Form](#) and a complete copy of the disputed City Bureau decision or determination to the Hearings Office by the appeal deadline.
2. The Appeal Hearing Request Form and the copy of the decision or determination being appealed must be received by the Hearings Office within 10 business days after the date of the decision or determination, unless a different deadline is specified in Code.
3. Appeal Hearing Request Forms are available at the Hearings Office and on the [Hearings Office website](#). Upon request, the Hearings Office will mail a blank Appeal Hearing Request Form to the requester.
4. Appeal Hearing Request Forms and other required documents may be filed with the Hearings Office by fax, mail, e-mail or hand-delivery, or may be filed electronically through the Hearings Office's electronic filing system (when available) at: <https://cms.synisys.com/portlandho/>.
5. All sections of the Appeal Hearing Request Form that are designated as “required” must be completed, and a complete copy of the disputed City Bureau decision or determination must be filed with the Appeal Hearing Request Form.
  - a. This information is required for the Hearings Officer to determine whether it has jurisdiction to hear the requested appeal and to provide notice of the appeal to the appropriate persons and entities.
  - b. The Hearings Office may deny any appeal request that does not include all of the required information.
6. The additional documents that must be provided to the Hearings Office depend upon whether the City Bureau decision or determination being appealed was issued following an administrative review.
  - a. *If the decision or determination being appealed was issued after an administrative review:* The Appellant must submit all documents to the Hearings Office that the Appellant provided to the City Bureau during the administrative review.

- b. *If the decision or determination was not issued after an administrative review:* The Appellant must submit all documents to the Hearings Office that the Appellant intends to rely on at the appeal hearing.
- c. Whenever possible, the Appellant should submit the additional documents required by this Section when the Appeal Hearing Request Form is filed. However, the deadline for filing the documents with the Hearings Office is 10 business days prior to the date of the hearing.

### **G. No Filing Fee for Appeal Hearings**

There is no filing fee for appeals of City Bureau decisions and determinations under [Code Chapter 22.10](#).

### **H. Denial of a Request for an Appeal Hearing**

The Hearings Officer may deny a request for an appeal hearing because the Request for an Appeal Hearing Form does not contain all required information or was not submitted by the appeal deadline.

1. If the Hearings Officer denies a request for an appeal hearing, the Hearings Office will send the Appellant written notice, either by mail or email, of the denial within five business days of the Hearings Office's receipt of the Appeal Hearing Request Form.
2. If a stay was placed on the City Bureau decision or determination because an appeal was filed, the Hearings Office will, in a timely manner, notify the City Bureau that the appeal hearing request was denied and that the stay should have no further force and effect.

### **I. Scheduling and Notice of Appeal Hearings**

1. The Hearings Officer will schedule the date, time, and place of all appeal hearings.
2. After scheduling an appeal hearing, the Hearings Office will issue a Notice of Appeal Hearing, which contains information related to the date, time, and place of the scheduled appeal hearing.
3. The Hearings Office will send the Notice of Appeal Hearing to:
  - a. The Appellant(s) or the Appellant(s) representative(s), at the email address or mailing address or addresses provided in the Appeal Hearing Request Form.

- b. The City Bureau identified on the City Bureau decision or determination submitted by the Appellant.
4. A [calendar of scheduled hearings](#) is available on the Hearings Office website. The calendar is subject to change. A party may contact the Hearings Office to obtain the most up-to-date information.

#### **J. City Bureau Submission of Documents to the Hearings Office**

The City Bureau, upon receipt of a Notice of Appeal Hearing, must convey to the Hearings Office all evidence and documents submitted to the City Bureau and any other materials used by the City Bureau to arrive at the decision or determination subject to the appeal.

1. The City Bureau's documents must be received by the Hearings Office no later than 10 business days prior to the date of the hearing.
2. The Hearings Officer may, at their discretion, refuse to consider any City Bureau documents received after the 10-day deadline in making the appeal hearing decision, or may postpone the hearing to provide time for the parties to review and prepare in light of the late-submitted documents.

#### **K. Discovery**

A party's right to discovery is limited as follows:

1. *If the decision or determination being appealed was issued after an administrative review:* The parties have the right to seek an order of the Hearings Officer:
  - a. Requiring the production of documents that were provided by the other party during the administrative review.
  - b. Commanding the presence, at the appeal hearing, of any person who appeared and presented testimony or argument during the administrative review.
2. *If the decision or determination was not issued after an administrative review:* [Code Sections 22.03.060 and 22.03.080](#) apply.

## L. Requests to Reschedule; Continuances

1. A party may request to reschedule an appeal hearing by submitting a [Request to Reschedule Form](#).
  - a. Request to Reschedule Forms are available at the Hearings Office and on the [Hearings Office website](#). Upon request, the Hearings Office will mail a blank Request to Reschedule Form to the requester.
  - b. Request to Reschedule Forms may be filed with the Hearings Office by fax, mail, e-mail, or hand-delivery, or may be filed electronically through the Hearings Office's electronic filing system, available at: <https://cms.synisys.com/portlandho/>.
  - c. The Hearings Office must receive the Request to Reschedule Form no later than 48 hours before the scheduled hearing (not including Saturday, Sunday, or official City holidays or closures).
2. The Hearings Officer has sole discretion to determine whether to grant a request to reschedule.
3. The [Hearings Office's online case management system](#) will electronically notify parties if an appeal hearing is rescheduled. If a party does not have access to email / the electronic case management system, the party must contact the Hearings Office to timely inquire about whether the hearing has been rescheduled.
4. If an appeal hearing is rescheduled per the Appellant's request, the 30-day deadline for conducting the hearing, set forth in [Code Section 22.10.040 A.](#), is considered waived by Appellant and the deadline does not apply.
5. The Hearings Officer may adjourn a hearing and continue it to a later date, on the motion of any party or upon the Hearings Officer's own motion, if it appears that further testimony, evidence, or argument should be received. The time and date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.
6. A request to reschedule or continue is not valid until ordered by the Hearings Officer.

## APPEAL HEARINGS

### **M. Pre-Hearing Conferences**

The Hearings Officer may, at the Hearings Officer's sole discretion, require the parties to meet for a pre-hearing conference in an attempt to clarify or narrow factual and/or legal issues and discuss possible settlement terms.

### **N. When Hearings are Held; Late Arrivals; Failure to Appear**

1. All appeal hearings are scheduled within the hours of 8:00 a.m. to 5:00 p.m. on Monday through Friday (not including official City holidays and closures).
2. The Hearings Officer will begin appeal hearings promptly at the scheduled time.
  - a. **Appeal hearings will not be rescheduled for late arrivals.** Parties arriving late may lose the opportunity to present their case or to hear other parties' testimony.
  - b. The parties must be prepared to present their cases to the Hearings Officer, including any witnesses and documentary evidence, at the scheduled hearing time. Hearings will not be continued because a party or their representative is not prepared.
3. If a party or witness fails to appear at a scheduled appeal hearing, the Hearings Officer will proceed with the hearing in their absence.
  - a. A party who fails to appear at a scheduled hearing is not entitled to have the hearing continued to a later date, unless the Hearings Officer determines, for good cause shown, that continuing the hearing or holding the record open for a reasonable period of time is appropriate.
  - b. Once the hearing record is closed, no additional testimony or exhibits will be considered.

### **O. Standard of Review; Standard of Proof**

1. The Hearings Officer will conduct a *de novo* review of the City Bureau's decision or determination subject to Appellant's appeal and will render a decision as to whether the decision or determination is justified by a preponderance of the evidence in the record and applicable legal standards.



2. The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.

#### **P. Appeal Hearing Procedures**

1. The manner of conducting all appeal hearings is subject to the Hearings Officer's sole direction, discretion, and control, except as limited by [Code Chapter 22.10](#) and these rules.
2. The Hearings Officer may allow a party or witness to appear by telephone or an electronic remote participation platform, for good cause shown, using procedures established by the Hearings Office.
3. An Appellant has the right to be represented by an attorney, at the Appellant's own expense. The Hearings Office encourages attorneys to notify the Hearings Office (directly or through the case management system) that they are representing a party, so that the Hearings Office / case management system can issue hearings notices directly to the attorney.
4. All appeal hearings are audio recorded.
  - a. Unless an Appellant requests, at the beginning of the appeal hearing, that the recording not be posted, a copy of the recording will be publicly available online within three business days following the hearing date.
  - b. If the recording is not posted, the Hearings Office will provide a copy of a hearing recording, upon request by an Appellant, as staff time permits. A request for a hearing recording must include the case number and the Appellant's name.
5. Appeal hearings will generally proceed as follows:
  - a. Opening comments by the Hearings Officer;
  - b. Opening comments by the Appellant (or the Appellant's representative) and the City Bureau (or its representative);
  - c. The Appellant's presentation of witness(es) and other evidence;
  - d. Cross examination by the City Bureau of each witness called by the Appellant;

- e. The City Bureau’s presentation of witness(es) and other evidence;
  - f. Cross examination by the Appellant of each witness called by the City Bureau;
  - g. The Appellant’s presentation of rebuttal witness testimony, if any;
  - h. Cross examination by the City Bureau of any rebuttal witnesses called by the Appellant;
  - i. The City Bureau’s presentation of rebuttal witness testimony, if any;
  - j. Cross examination by the Appellant of any rebuttal witnesses called by the City Bureau;
  - k. The Appellant’s closing argument (based solely on evidence presented); and
  - l. The City Bureau’s closing argument (based solely on evidence presented).
6. The Hearings Officer may set reasonable time limits for oral presentation and testimony and exclude or limit cumulative, repetitious, or immaterial matter.

#### **Q. Rules of Evidence, Generally**

Evidence of a type commonly relied upon by reasonable, prudent persons in conducting their important affairs is admissible in appeal cases.

#### **R. Witnesses**

1. An Appellant may testify at the appeal hearing, and may have one or more witnesses testify on their behalf.
2. The City Bureau may offer witness testimony at the appeal hearing.
3. All testimony given at an appeal hearing must be under oath or affirmation administered by the Hearings Officer.
4. The parties will have the right to cross-examine any witnesses.
5. The Hearings Officer may question the witnesses to develop the record or seek clarification.

## S. Exhibits

- I. Exhibits consisting of written or printed evidence (including photographs) may be submitted before or during the appeal hearing as follows:
  - a. The City Bureau, and any Appellant who used the electronic case management system to request the appeal hearing, are strongly encouraged to upload all exhibits to the case management system.
    - i. Evidence that is uploaded to the case management system can be viewed by the Hearings Office and all parties.
    - ii. The Hearings Office will provide Appellants who opt out of the electronic case management system with one copy of the exhibits submitted by the City Bureau, at no charge.
  - b. Evidence not submitted online may be submitted in-person, via e-mail, mail, or fax.
  - c. Evidence must be received by the Hearings Office at least 10 business days prior to the date of the hearing. If evidence is not received by the deadline:
    - i. The party may request to offer the evidence at the hearing, if the party brings three hard copies of each document to the hearing. The Hearings Office may waive this requirement for good cause shown.
    - ii. The Hearings Officer may postpone the hearing to provide time for the parties to review and prepare in light of the late-submitted documents.
    - iii. The Hearings Officer may, at their discretion, exclude the evidence.
2. All evidence submitted to the Hearings Office becomes a public record.
  - a. The parties must redact (black out) all confidential information (e.g., social security numbers, driver's license or passport numbers, financial account numbers, health information, etc.) from exhibits before submission to the Hearings Office.
  - b. The Hearings Office may edit a document or recording to redact confidential content before publicly posting or distributing the document or recording. The Hearings Office will retain the unedited record with restricted access.

3. The Hearings Office will ensure that exhibits are numbered upon receipt, the party offering the exhibit is noted, and all exhibits are preserved as a part of the record.
  - a. The Hearings Office affixes an exhibit label to the bottom righthand corner of each page of each document. Parties should therefore leave a sufficient margin or border at the bottom righthand corner of each exhibit so that important information is not obscured by the exhibit label.
  - b. All evidence submitted into the evidentiary record becomes the property of the Hearings Office and will not be returned.
4. The Hearings Officer will ensure that all parties receive copies of and an opportunity to respond to all exhibits.

#### **T. Other Types of Evidence**

Evidence other than oral testimony or in writing may be offered and admitted subject to the following limitations:

1. If equipment, technology, or computer programs are required to access or present the evidence, the person offering such evidence is responsible for providing and setting up the equipment, technology, or programs. The Hearings Office does not supply equipment, technology or programs (including, but not limited to projectors and computers).
  - a. A copy of the evidence presented must be provided to the Hearings Office to keep with the record for archiving and appeal purposes.
  - b. Set up must be done before the scheduled start of the hearing and must not disrupt the hearing process. The equipment, technology, or programs must be removed immediately after the hearing concludes.
  - c. The Hearings Officer will not attempt to open any computer flashdrive/DVD/CD/phone or program. The Hearings Office will not click on a link unless the Bureau of Technology first reviews the link for security purposes related to malware.
2. If a party has questions or concerns about how to submit a particular item of evidence, they should contact the Hearings Office clerks at least two business days prior to the scheduled Hearing to coordinate submission of evidence.

## **U. Hearings Officer’s Right to Eject and Exclude Persons from an Appeal Hearing**

The Hearings Officer may eject any person from the Hearing Room if the person engages in disruptive conduct or otherwise violates [the rules of conduct at City property \(Code Chapter 3.18\)](#).

1. An ejected person may not re-enter the Hearing Room for the remainder of the day.
2. If a person is ejected, they are deemed, by their behavior, to have waived their right to offer any additional in-person testimony or arguments related to the appeal. The ejected person may only submit additional written evidence, before the hearing closes, through an agent or representative.
3. If the Hearings Office determines that a person should be ordered to leave City property to protect health, welfare, or safety or to prevent future disruptions, the Hearings Office will immediately contact a [Person-in-Charge](#) or follow other applicable Hearings Office procedures.

## **V. Ex Parte Communications**

A Hearings Officer may not initiate, permit, or consider *ex parte* communications, except that when circumstances require it, an *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, if:

1. The Hearings Officer reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and
2. The Hearings Officer promptly notifies all other parties of the substance of the *ex parte* communication and gives the parties an opportunity to respond.

## **W. Interpreters**

1. Appellants needing interpretation assistance are encouraged to provide their own interpreter for the appeal hearing.
2. The Hearings Office will make reasonable accommodations for individuals needing an interpreter. Upon request, the City will endeavor to provide, at the City's expense, a qualified language interpreter for those needing such assistance.

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- a. To help ensure availability, an Appellant should contact the Hearings Office to request for an interpreter as soon as possible, and no later than 48 hours before the scheduled appeal hearing (not including Saturdays, Sundays, or official City holidays or closures). If shorter notice is given, the Hearings Office will make a good faith effort to provide an interpreter.
  - b. The request for an interpreter should be in writing, and should include the name and language (including any regional dialect) of the person needing an interpreter.
  - c. If interpreter services are not available, the Hearings Officer may proceed with or continue the hearing, at the Hearings Officer's sole discretion.
3. The Hearings Officer will ask the person providing interpretation assistance to state their name and mailing address for the record and swear to or affirm the following:

*"Do you swear or affirm that you are qualified to provide translation assistance from English to [Language] and will make a true and impartial translation of the proceedings using your best skills and judgment?"*

## HEARINGS OFFICER'S FINDINGS AND ORDERS; APPEALS

### **X. Appeal Hearing Orders**

1. The Hearings Officer will issue written findings, which explain the facts, laws and rules related to the Hearings Officer's appeal decision.
2. The Hearings Office will serve a copy of the order on all parties either by mail or email.

### **Y. Requests to Reopen the Record after the Hearing is Closed**

The Hearings Officer may reopen an appeal hearing record for good cause upon receiving a written request submitted by either party.

1. Cases will not be reopened after 30 calendar days of the date of the Hearings Officer's order.
2. Good cause may include but is not limited to:
  - a. The party was unable to provide evidence at or before the hearing, despite all reasonable diligence, for reasons beyond the party's reasonable control.

- b. There are newly discovered facts that were not discoverable with due diligence prior to the hearing.
- c. There has been an intervening change in controlling law.
- d. The Hearings Officer made a clear error of law.
- e. An injustice needs to be prevented or corrected.
- f. The party would be harmed if the Hearings Officer denies the request to reopen the record.

## **Z. Appeals**

The Hearings Officer's decision in appeal cases is final and is not appealable to the City Council. The parties may seek judicial review of the Hearings Officer's order by writ of review to the Circuit Court of Multnomah County, as provided in [ORS 34.010 - 34.100](#).

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## **Rule Information and History**

Questions about these rules may be directed to the [Hearings Office](#) at 503-823-7307.

Adopted by the City Code Hearings Officer and effective on September 1, 2015.

Filed for inclusion in the PPD on September 17, 2015.

The City Auditor originally adopted the rule set forth in Section F (Filing Fee for Appeal Hearings) as a separate, interim rule 9.06. The interim rule changed the filing fee for appeal and tow hearings to \$0.00 to promote access to the Hearings Office to contest City Bureau decisions and determinations.

The interim rule was adopted on June 15, 2017 and was effective for not more than 180 days. The City Auditor adopted Auditor's Office Administrative Rule 9.06, which established that there is no filing fee for appeal hearings, on November 30, 2018.

The City Auditor repealed Hearings Office rules on July 1, 2020 because the Hearings Office transferred out of the Auditor's Office.

Revised rules adopted by the Chief Hearings Officer on July 1, 2020.

## **APPENDIX A – SAMPLE NOTICE OF RIGHT TO APPEAL**

### **YOUR RIGHT TO APPEAL:**

You have the right to request a hearing before the Code Hearings Officer to appeal this [action / decision / determination / sanction].

To appeal, you must file the following with the City’s Hearings Office ***within 10 business days of the date of this notice***:

- A. A completed APPEAL HEARING REQUEST FORM (enclosed). APPEAL HEARING REQUEST FORMS are also available at:

<https://www.portlandoregon.gov/hearings/article/747356>.

- B. A copy of this [title of document].

- C. A statement explaining why you believe the [action / decision / determination / sanction] is invalid, unauthorized, or otherwise improper.

- D. Any supporting documentation you intend to rely on at the appeal hearing. See [Portland City Code Section 22.10.030 B](#); [Hearings Office Rule ARB-ADM-9.05\(3\)\(c\)\(ii\)](#).

No filing fee is required. The effect of the proposed [action / decision / determination / sanction] [will / will not] be stayed pending resolution of the appeal.

If you have any questions regarding how to request an appeal, please contact the Hearings Office at (503) 823-7307.

Appeals are conducted in accordance with Code Chapter 22.10 (available at <https://www.portlandoregon.gov/citycode/28576>) and City Administrative Rule ADM-9.05 (available at <https://www.portlandoregon.gov/citycode/article/545438>).

The Hearings Office is located at: 1900 SW 4th Avenue, Suite 3100 (third floor), Portland, Oregon 97201. More information about the Hearings Office is available at: <https://www.portlandoregon.gov/hearings/26645>.