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Rule 1. GENERAL PROVISIONS

- A. **Reference.** These rules may be referred and cited to as the “Hearings Office Rules.”
- B. **Authority.** Portland City Code 22.03.010 authorizes the Hearings Office to adopt rules, procedures, and forms to implement the provisions of Portland City Code Title 22.
- C. **Applicability.** The Hearings Office Rules apply to both Code enforcement complaints under City Code 22.03 and appeal cases filed under City Code Chapter 22.10. They do not apply to tow appeal hearings authorized pursuant to PCC 16.30.410 or land use hearings under Title 33.
- D. **Conflict between the Hearings Office Rules and Portland City Code.** In the event of any conflict between the Hearings Office Rules and Title 22, the provisions of Title 22 shall prevail.
- E. **Waiver.** The Hearings Officer may waive, for good cause shown, any provision of the Hearings Office Rules unless such waiver conflicts with City Code Chapter 22.10 or 22.03, as applicable.

Rule 2. DEFINITIONS

“**Appeal Form**” means the Request for Appeal Hearing Form made available by the Hearings Office.

“**Appellant**” means a person or entity granted a right by City Code to appeal a City of Portland Bureau Determination to the Hearings Officer.

“**Authorized Representative**” means an individual authorized to represent the interests of a Party in all aspects of the hearing process either by virtue of their title with an entity, or based on written statements from a Party indicating the authority of the representative. For example, the president of a corporation will be deemed an authorized representative by virtue of their title. An attorney would be an Authorized Representative based on representations from a Party reflecting that counsel has been retained.

“**City Code**” or “**Code**” means the Code of the City of Portland.

“**City Policy Documents**” or “**City Administrative Rules**” means any document filed with the Auditor and identified on the City of Portland Website as a Portland Policy Document or rule.

“**Confidential Information**” means information that is made confidential or privileged by law or the disclosure of information that is protected by law and includes social security numbers,

driver's license or state identification numbers, passport numbers, financial account, credit card or debit card numbers or any required security or access code or password that allows use of the account, age, birthdate, gender, race, ethnicity, disability, criminal record, protected health information, a member of the public's first name or first initial and last name in combination with the individual's home address or telephone number, and any other information the disclosure of which by the Hearings Office is proscribed by HR Rule 11.04 ("Protection of Restricted and Confidential Information").

"De novo Review" means, in appeal cases, the Hearings Officer will review and weigh all the evidence in the record and make findings related to the facts and the law as required by PCC 22.10.050.E. Findings of fact shall be based upon the same evidence relied upon in the Determination unless the Hearings Officer finds good cause to consider other evidence determined to be relevant and which existed at the time of a bureau Determination.

"Determination" means and includes any decision, determination, or other written action by a City bureau that provides for an appeal to the Hearings Officer.

"Disruptive Conduct" means conduct by any person in attendance at a hearing that interferes with the normal hearing process, as determined by the Hearings Officer.

"e-Filing," "e-File" or "e-Filed" shall refer to the submission of documents through the Hearings Office e-Filing system for purposes of filing in a Hearings Office case. E-mailing or sending a document by facsimile does not constitute "e-Filing" a document. For e-Filing System rules, see Hearings Office e-Filing System Rules, ARB-ADM [REDACTED]

e-Filing System shall refer to the Hearings Office's system of electronic filing and electronic service of documents via the internet. Unless otherwise stated, all communication with the Hearings Office is via the e-Filing System.

"Ex parte Communications" means any communication between the Hearings Officer and fewer than all Parties or their lawyers, concerning a pending matter. Ex parte communications do not include communications between the Hearings Officer and any person employed by the Hearings Office, or the Hearings Office's legal counsel. The Hearings Office staff (excluding the Hearings Officer) may communicate with City staff or other participants regarding procedures and for verification of evidence in record.

"Hearings Office" means the clerical, administrative, and ministerial personnel designated as such by the Hearings Officer.

"Hearings Officer" means the Code Hearings Officer created by Title 22 of the City Code.

"Initiating Bureau" means the City bureau filing a complaint in a Code enforcement proceeding.

"Interpreter" means a person with sufficient fluency to communicate with a person who has limited English proficiency and can accurately translate the communication into English.

Interpreter also refers to a person who assists or aids another person due to deafness or a disability.

“Limited Party” means a person or entity, not a party, with a limited interest in the proceeding or an interest in only one or more matters or areas which are the subject of the proceeding, who has requested and been granted limited Party status by the Hearings Officer pursuant to Rule 6 and is entitled to participate in the proceedings in the manner or area(s) specified by the Hearings Officer.

“Manual Filer” means an Appellant who has limited access to a computer system, the internet, or e-mail on a regular basis and who opts out of the e-Filing System. Respondents in code enforcement cases shall be Manual Filers unless they register with the e-Filing System and agree to electronic service of correspondence. City Bureaus cannot be Manual Filers.

“Notice of Hearing” means a notice issued by the Hearings Office regarding the time, date and location of a scheduled hearing.

“Notice to Respondent” means a standard notice substantially in the form attached hereto as Appendix A that is required to be served on Respondents along with a Notice of Hearing and complaint in accordance with Rule 3.C.

“Opt Out” means the act by an Appellant or Respondent of choosing to file an appeal or respond to a Code complaint as a Manual Filer and thereby indicate an intent to (i) submit required documents to the Hearings Office in hard copy form no later than 4:30 p.m. on the date due; and (ii) receive notices, decisions, and other communications from the Hearings Office and City bureaus via regular mail.

“Party” or “Parties” means a person or entity who has an interest in the proceeding and is entitled to fully participate in the proceeding, unless such rights are waived. Parties include:

- (i) The City of Portland, through the Initiating Bureau or Responding Bureau;
- (ii) The named Respondent(s) or Appellant(s);
- (iii) Tenants, residents, and lessees of an Affected Dwelling Unit (defined in Rule 3.E(vi)(3)) in proceedings subject to Rule 3; and
- (iv) Any other persons or entities with an interest in the proceedings who has requested and been granted Party status by the Hearings Officer pursuant to Rule 6.

“Received” means the date and time a document is time stamped by the Hearings Office or the e-Filing System.

“Respondent” means the person or entity against whom a code enforcement complaint is filed.

“Responding Bureau” means the City bureau whose Determination is subject to appeal to the Hearings Office.

“Stay” means that a sanction or Determination is not in effect or has been postponed pending review by the Hearings Officer.

“Timely” means a document stamped, by the Hearings Office or the e-Filing System, with a date/time-stamp, within the time limits established by PCC 3.130, City Code Chapter 22.10, or Hearings Office Policy Documents or City Administrative Hearings Office Rules. The date/time-stamp shall establish conclusively whether a document was received timely.

“Website” means the City of Portland internet address specifically related to the Hearings Office.

Rule 3. CODE ENFORCEMENT PROCEEDINGS

A. PLEADINGS

- (i) Pleadings shall consist of the complaint only unless the Hearings Office directs an answer. Complaints must be submitted via the e-Filing System on the Website. Except as may be stipulated or admitted in an answer or at a hearing, all allegations of the complaint will be deemed to be denied.
- (ii) The complaint shall be in substantially the form set forth in Appendix B. The complaint shall contain a brief and plain statement of the alleged facts constituting the violation together with a reference to the specific Code section or sections involved, and a brief and plain statement of the relief requested, including the amount of the proposed or requested civil penalty, if any. The complaint shall also contain, when applicable, information regarding the real property connected with the violation necessary to file tax lien, including bureau case number, address, county tax assessor number, and legal description.
- (iii) Amendments to the complaint.
 - (1) The complaint may be amended no less than seven (7) days prior to the date set for hearing by filing such amended complaint with the Hearings Office via the e-Filing System and, if Respondent is a Manual Filer, contemporaneously delivering a copy thereof to the Respondent(s) and all other Parties. Thereafter, a complaint may be amended only with the consent of all other Parties appearing at the hearing or of the Hearings Officer. If the Hearings Officer allows the complaint to be amended, the Hearings Officer may do so upon such terms and conditions, including postponing or continuing the hearing, as are necessary or appropriate to prevent undue prejudice to the interests of any Party.

- (2) When issues not raised in the complaint (or answer, if applicable) are raised at a hearing by the Parties without objection, they shall be treated in all respects as if raised in the pleadings. Upon motion to the Hearings Officer, any Party may amend its pleadings to conform to the evidence and to reflect the issues so raised.
- (3) If evidence is objected to at a hearing on that grounds that it is not within the issues raised in the pleadings, the Hearings Officer may allow the pleadings to be amended and shall do so freely when the merits of the action or defense will be served thereby and the objecting Party fails to satisfy the Hearings Officer that the admission of such evidence would prejudice such Party in maintaining such Party's defense on the merits. The Hearings Officer may grant a continuance to enable the objecting Party to meet such evidence.
- (4) Motions may be made in writing at any time, orally on the record at a hearing, or at any conference. Written motions shall be mailed or otherwise delivered to all other Parties.

B. SETTING OF HEARINGS

The time and date of all hearings shall be set by the Hearings Office after a complaint is filed who will issue a Notice of Hearing to the Initiating Bureau.

C. NOTICE TO RESPONDENTS

The Initiating Bureau shall be responsible for serving all Respondents Notice of the proceeding. conventionally as required by PCC 22.03.020 at least fifteen (15) calendar days prior to the date set for hearing. "Notice" under this Rule 3 shall mean delivery of the following documents: (1) Notice to Respondent; (2) Notice of Hearing; and (3) the complaint. The Hearings Officer may, upon application of the Initiating Bureau, set a shorter time when it appears the alleged violation presents an imminent or immediate danger to the health, safety, or welfare of the public or of any person such as will not admit delay. Respondents, necessary parties and Interested Parties shall not be served Notice through the e-Filing System unless (1) they have consented in writing (to the Initiating Bureau) to accept electronic service; and (2) have registered with the e-Filing System.

D. OTHER NECESSARY PARTIES

- (i) In all cases where the relief requested includes vacation or demolition of occupied residential property, tenants, residents, and lessees of the Affected Dwelling Units shall be Parties to the proceeding and shall be given Notice as specified in Rule 3.E(vi).

- (ii) In all cases involving occupied residential property in which the relief requested by the complaint *does not* include vacation or demolition of the property, but, during the course of the proceeding, the Hearings Officer determines that an order for such vacation or demolition of any dwelling unit is a reasonably possible outcome of the proceedings, the Hearings Officer shall continue the hearing and cause the tenants, residents and lessees of the Affected Dwelling Units to be given notice of the hearing and of the fact that vacation or demolition is a reasonably possible outcome of the proceeding. Such notice shall be given in as specified in Rule 3.E(vi) or in any other manner reasonably likely to notify the affected parties of the proceeding.
- (iii) Such Parties shall be given notice at least ten (10) days prior to the time set for hearing or any continuance thereof; provided, however, the Hearings Officer may, on the Hearings Officer's own motion or upon the motion of any Party, set a shorter time when it appears the alleged violation presents an imminent or immediate danger to the health, safety, or welfare of the public or any person such as will not admit delay.

E. NOTICE TO INTERESTED AND NECESSARY PERSONS OR PARTIES

- (i) In proceedings involving alleged Code violations involving the use, occupancy, or condition of real property, the owners of property, lenders, occupants, tenants, residents, and lessees of the Affected Dwelling Units involved, if any, shall be deemed "Interested Parties" and shall be given notice of hearing as required by PCC 22.03.030 and as provided in this rule. The Initiating Bureau shall be responsible for serving any and all necessary parties with Notice.
- (ii) **Owners.** Notice shall be given to the real property owner(s) by either of the following means:
 - (1) Personal service upon the owner(s); or
 - (2) Substitute service upon the owner by both
 - a. Posting at or near the principal entrance to the structure involved or at any other conspicuous location on the real property; and
 - b. Follow-up mailing to the owner(s) or the owner(s) agent, directed to such owner(s) last known address as it appears in the most recent assessment roll of the county in which the property is located.
- (iii) **Equitable Interests.** Notice shall be given to any other person or entity known or reasonably believed to have or claim a legal or equitable ownership interest in the property if the mailing address of such person or entity is known. In proceedings involving leased or rented non-residential real property, the lessee(s) or tenant(s) shall be given Notice if the address of such person is known, otherwise Notice shall be given through posting and follow-up mailing.

- (iv) **Joint Interests.** In the case of real property held as tenancy in common, joint tenancy, or tenancy by the entirety, Notice to any one or more of the tenants in common, joint tenants, or tenants by the entirety is sufficient.
- (v) **Lenders.** Service of Notice shall be completed upon a lender by mailing to the lender(s) or the lender(s) agent, directed to such lender(s) last known address, if available.
- (vi) **Residents.** Notice shall be given to occupants, tenants, residents, and lessees of residential property by any of the following means:
- (1) Personal service upon one or more occupants of each Affected Dwelling Unit, or
 - (2) Substitute service upon occupants of each Affected Dwelling Unit by both:
 - a. Posting at or near the principal entrance to the structure involved or at any other conspicuous location on the real property; and
 - b. Follow-up mailing addressed to the occupant or resident of each Affected Dwelling Unit.
 - (3) "Affected Dwelling Unit" means a dwelling unit known to the Initiating Bureau which:
 - a. Contains an alleged Code violation or in which a Code violation is alleged to have occurred; or
 - b. Has had or may have its safety or habitability substantially adversely affected by an alleged Code violation or by any proposed or likely order of the Hearings Officer.
 - (4) The Initiating Bureau may apply to the Hearings Officer for waiver or modification of the Notice to owner(s), lender(s), occupants, tenants, residents, and lessees. The Hearings Officer shall grant such request for waiver or modification only if it clearly appears that one of the following conditions applies:
 - a. The proposed method of Notice is as likely or more likely to provide timely and adequate notice as are the methods specified in these rules;
 - b. The results of the hearing will not substantially adversely affect any of the rights or interests of such persons; or
 - c. The alleged violation(s) present an imminent or immediate danger to the health, safety, or welfare of the public or to any person so as will not permit delay and service of Notice, as provided by these rules, cannot be accomplished in the time available. In such cases the Hearings Officer shall require the Initiating Bureau to provide such

Notice, if any, as is reasonably practical under the circumstances, including but not limited to oral notice in person or by telephone.

- (vii) **Complainants.** If the proceeding arises out of or results from a complaint to the Initiating Bureau, and the complainant has not requested confidentiality (and is not otherwise confidential pursuant to bureau policy), such complainant(s) shall be given Notice personally or by mailing addressed to such person's last known address.
- (viii) **Interested Party.** Interested Parties shall be served at least ten (10) days prior to the date set for hearing; provided, however, the Hearings Officer may, upon application of the Initiating Bureau, set a shorter time when it appears that the alleged violation presents an imminent danger to the health, safety, or welfare of the public such as will not admit delay.

F. RETURN OF SERVICE

Prior to commencement of the hearing, the Initiating Bureau shall file with the Hearings Office a return of service substantially in the form of Appendix C, certifying that the Respondents and Interested Parties have been given appropriate Notice as required by these rules and PCC 22.03.030.

G. APPEARANCES

- (i) A Party shall appear by:
 - (1) Appearing personally or by an attorney at the place and time set for a pre-hearing conference, hearing and/or continuance thereof; or
 - (2) Filing a written appearance with the Hearings Office. A written appearance shall contain a statement that such Party appears in writing, the name and address of the Party, and the name and address of the Party's attorney, if any. Registration with the e-Filing System including the relevant case number shall also constitute an appearance.
 - (3) If a Party will be represented by an attorney, written notice shall be provided to the Hearings Office and all Parties at least two business days prior a scheduled hearing. Attorneys are required to participate in the e-Filing System and may not Opt Out. All communications with a Party represented by an attorney will be through the attorney.
- (ii) A Party who fails to appear shall be deemed to have waived all right of further notice concerning the proceeding.

H. PRE-HEARING CONFERENCES

- (i) At least seven (7) calendar days prior to hearing, the Hearings Office shall have a pre-hearing conference to facilitate the conduct and resolution of the case.
- (ii) The purposes of a pre-hearing conference may include, but are not limited to the following:
 - (1) To facilitate discovery and to resolve disagreements about discovery;
 - (2) To identify, simplify and clarify issues;
 - (3) To eliminate irrelevant issues;
 - (4) To obtain stipulations of fact;
 - (5) To provide to the Hearings Officer, Hearings Office and Parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
 - (6) To authenticate documents;
 - (7) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;
 - (8) To discuss the use of a collaborative dispute resolution process in lieu of or preliminary to holding the hearing; and
 - (9) To discuss settlement or other resolution or partial resolution of the case.
- (iii) The pre-hearing conference may be conducted in person or by telephone.
- (iv) The Hearings Office must make a record of any stipulations, rulings and agreements. The Hearings Office may make an audio record of the pertinent portions of the conference or may place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the Hearings Office and the Parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.
- (iv) The Parties shall ensure that any documents submitted to the Hearings Office do not include Confidential Information. All documents submitted to the Hearings Office are public records subject to disclosure pursuant to ORS 192.420. The Parties shall redact (black out) all Confidential Information prior to submission of the document(s) to the Hearings Office.

Rule 4. APPEAL CASES (other than tows under PCC 16.30.420.B.)

- A. Minimum Requirements for Appeal Hearing Requests.** A person or entity requesting an appeal hearing must comply with the following minimum requirements:

- (i) **Submission of a Completed Request for Appeal Hearing Form.** The Request for Appeal Hearing Form (“Appeal Form”) shall be made available on the Hearings Office Website. All sections of the Appeal Form that are designated “required” must be completed.
 - (1) Appellant must submit the Appeal Form via the e-Filing System on the Website unless the requester is a Manual Filer.
 - (2) When the requester is a Manual Filer, the appeal shall be filed at the public terminal at the Hearings Office. Or, upon telephone request, the Hearings Office shall mail a blank Appeal Form to the requester.
- (ii) **Submission of the Determination that is the subject of the appeal.** With the exception of Manual Filers, a copy of the City of Portland bureau Determination that the Party is disputing must accompany submission of the Appeal Form. Manual Filers must submit a hard copy of the City of Portland bureau Determination to the Hearings Office no later than 4:30 p.m. the next business day after completing the Appeal Form at the Website.
- (iii) **Submission of all documents to be considered by the Hearings Officer.** The documents that must be provided to the Hearings Office, at the time of submission of the Appeal Form, depends upon whether the Determination was issued by a bureau as a result of an Administrative Review.
 - (1) **Administrative Review.** Many City bureaus provide a person disputing a bureau action or decision an opportunity to request a meeting where an Appellant presents evidence and argument directly to the bureau (“Administrative Review”). After an Administrative Review, the City bureau will issue a written determination. Any appeal of an Administrative Review Determination shall only review the issues raised with the Initiating Bureau in an Appellant’s administrative review request.
 - a. If a Determination was issued by a City bureau as a result of an Administrative Review, then an Appellant must, at the time of submission of the Appeal Form, also submit all documents to the Hearings Office that the Appellant provided to the City bureau at the Administrative Review. Documents that were not involved in the Administrative Review *will not* be considered by the Hearings Officer in making a decision on the merits unless the Hearings Officer finds good cause to consider such records. Appellant shall ensure that any documents submitted do not include Confidential Information. Appellant shall redact (black out) all Confidential Information prior to submission of the document(s) to the Hearings Office.
 - (2) **No Administrative Review.** If the Determination was not issued by a City bureau as a result of an Administrative Review, then an Appellant must, at the time of submission of the Appeal Form, submit all documents an Appellant intends to rely on at the Hearings Office hearing.

- B. Consequences of Failure to Provide All Required Information.** The information described in paragraphs 4(A)(i), 4(A)(ii), and 4(A)(iii) is required for the Hearings Office to ascertain whether it has jurisdiction to hear the requested appeal and to provide notices to the appropriate persons. Submission of any appeal request that does not include all required information shall be considered incomplete and may be denied a hearing. Additional documents may be accepted into the record as evidence by the Hearings Officer at the hearing so long as they are relevant to a fact at issue and were in existence at the time of the Determination.
- C. Consequences of a Late Filing.** If all required information is not filed by the appeal deadline, the appeal request will be denied unless an Appellant has shown good cause to waive the deadline.
- D. Stays.** When City Code, City Administrative Rules or City Policy Documents allow for a stay of a sanction upon the filing of an appeal, the Hearings Office shall issue a Stay upon the filing of an Appeal Request Form.
- E. Denial of Request for an Appeal Hearing.**
- (i) **Reasons for Denial.** A request for an appeal hearing will be denied under the following circumstances:
 - (1) Incomplete Submission.** The request for an appeal hearing does not contain all required information.
 - (2) Not Timely.** The request for an appeal hearing is not submitted timely.
 - (3) Lack of Jurisdiction.** The right to file an appeal with the Hearings Office is not authorized by City Code, City Administrative Rules or City Policy Documents.
 - (ii) **Notice of Denial.** A written notice of denial will be issued within 5 business days of the date/time stamp on the Appeal Request Form.
 - (iii) **Stay.** If a Stay was placed on the Determination upon filing of a request for Appeal Hearing, the Hearings Office will notify the City bureau that the request for appeal Hearing was denied and that the Stay should have no further force and effect.
- F. Bureau Submission of Documents to the Hearings Office.** A Responding Bureau, upon receipt of a Notice of Appeal Hearing, shall convey to the Hearings Office via the e-Filing System all evidence/documents/materials used by the Responding Bureau to arrive at the Determination subject to the appeal. If multiple Determinations are being appealed for the same Appellant, the Responding Bureau shall submit copies of the relevant information for each Determination with reference to the appropriate Hearings Office case number.

- (i) The Responding Bureau's evidentiary submission of documents must be received by the Hearings Office via the e-Filing System within 10 business days of the date of mailing of the Notice of Hearing. If Appellant is a Manual File, the Responding Bureau shall contemporaneously send a copy to Appellant by first-class mail.
- (ii) Documents received after the 10-day deadline shall not be considered by the Hearings Office in making the appeal hearing decision except upon the Responding Bureau's showing of good cause.
- (iii) The Responding Bureau shall ensure that any documents submitted do not include Confidential Information. The Responding Bureau shall redact (black out) all Confidential Information prior to submission of the document(s) to the Hearings Office.

G. Discovery. A Party's right to discovery is limited as follows:

- (i) **Administrative Reviews.** For appeals involving City bureau decisions rendered following an Administrative Review process that allowed an Appellant to present evidence and argument related to the Determination:
 - (1) A Party shall have the right to seek an order of the Hearings Officer requiring the production of documents provided by the other Party during the Administrative Review process.
 - (2) A Party shall have the right to seek an order commanding the presence, at the appeal hearing, of any person who appeared and presented testimony or argument during the Administrative Review process.
- (ii) **No Administrative Review.** Appeals where the City bureau decision was rendered and no Administrative Review process occurred, the Parties shall be entitled to discovery as provided in PCCs 22.03.060 and 22.03.080.

Rule 5. HEARINGS

A. Hearings Calendar; Notice of Hearing; Office Closures. A calendar of all scheduled hearings is available on the Hearings Office website. The calendar is subject to change. Up-to-date information may be obtained by contacting the Hearings Office by phone or in person. Hearings scheduled for days on which City Offices are closed due to weather conditions or otherwise will be cancelled and rescheduled.

(i) **General Contents of the Notice of Hearing**

- (1) The Notice of Hearing in both appeal and code enforcement cases shall contain the date, time, and place of the scheduled hearing.
- (2) The Notice of Hearing shall be provided by the Hearings Office within the timelines outlined in these Hearings Office Rules.

(ii) **Delivery of Notice of Hearing.** In Code enforcement cases, Notices of Hearings are issued by the Hearings Office and served in accordance with Rule 3. In appeal cases, Notices of Hearing are sent by the Hearings Office to Parties electronically via the E-Filing System to:

- (1) The Appellant(s), or Appellant(s) Authorized Representative(s) at the e-mail address or physical address (as appropriate) provided in the Appeal Request Form; and
- (2) The respective City bureau's designated e-mail address for Hearing Office notices, or, if none, to the representative identified on the Responding Bureau' determination attached to an Appellant's request for an appeal hearing; and
- (3) The Hearings Office will not communicate with Parties on the merits via e-mail outside of the e-Filing System except in case of a system failure or other emergency. All such communications will become part of the official record.

(iii) **Respondents and Manual Filers.** Manual Filers and Respondents will be sent Notice of Hearings and other correspondence via first-class mail through the United States Postal Service unless they register with the e-Filing System, except that Respondents will be served the Notice of Hearing in accordance with Rule 3.

B. Requests to Reschedule Hearing. A Party or a Party's representative may request to reschedule a Hearing by submitting, in writing via the E-Filing System, a Request to Reschedule Form no less than two business days before a scheduled hearing. If attorneys are involved on both sides, they must consult and provide at least three alternative dates that are mutually agreeable prior to submitting the request. The Hearings Office must receive the Request to Reschedule Form no later than two business days before the scheduled hearing. The Hearings Officer has sole discretion to grant a request to reschedule or postpone a Hearing. It is the responsibility of the Party who submitted the Request to Reschedule Form to timely inquire about whether the hearing has been rescheduled. The Hearings Officer may grant a postponement upon such terms and conditions as appears necessary or appropriate to protect the public health, safety, or welfare or to avoid serious detriment to any Party. Postponements shall be granted upon the agreement of all Parties.

C. Hearing Procedure

(i) **General Rule.** The manner of conducting all hearings is subject to the Hearings Officer's sole discretion and control, except as limited by Code 22.10 and these rules.

(ii) **Telephone Hearings.** Except as provided herein, Hearings by telephone are not available. A witness may testify by telephone only upon receiving prior permission

from a Hearings Officer. Any such requests shall be made no later than two business days prior to the hearing in the format required by the Hearings Office.

- (iii) **When Hearings are Held:** All hearings are scheduled within the hours of 8:30 a.m. to 4:00 p.m. on Monday through Friday (except recognized City holidays). Hearings may be continued or rescheduled upon the reasonable request of a Party in accordance with Rule 7 below.
- (iv) **Hearings Start Promptly at the Scheduled Time.** Hearings begin promptly at the scheduled date, time, and place. Persons arriving late may lose the opportunity to present their case or to hear other Parties' testimony.
- (v) **Standard of Proof.** The Hearings Officer shall render a decision as to whether the Determination subject to Appellant's appeal is justified by a preponderance of the evidence in the record and applicable legal standards. The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition. No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any Party, and as supported by and in accordance with reliable, probative, and substantial evidence.
 - (1) **Licenses.** Unless otherwise provided in City Code, in appeal cases involving the issuance or renewal of a City-issued license, the burden of proof shall be upon an Appellant to establish that Appellant meets the requirements of the license and is not subject to disqualification.
 - (2) **Sanctions.** Unless otherwise provided in City Code, in the case of the imposition of a sanction, the burden of proof shall be upon the bureau to establish the violation gives rise to the sanction.
 - (3) **Other Privileges.** Unless otherwise provided in City Code, in appeal cases involving any privilege, the burden of proof shall be upon an Appellant to establish they meet the relevant requirements.
- (vi) **Hearing Memoranda.** Parties may submit to the Hearings Office via the e-Filing System, no later than the day prior to the Hearing, memoranda summarizing their case, legal precedent, or legal analysis which they believe may aid the Hearings Officer in determining the issues ("Hearing Memoranda"). Copies of Hearing Memoranda, if any, must be delivered concurrently to the Hearings Office via the e-Filing System and to opposing Parties who are Manual Filers via first-class mail.

Rule 6. REQUEST TO PARTICIPATE AS A PARTY OR LIMITED PARTY

- A. After initiation of a proceeding, a person who has a personal or public interest in the outcome of a Hearing shall be given an opportunity to participate as a Party or a Limited Party.
- B. Except as set forth in subsection (iii) below, any person requesting Party or Limited Party status shall appear at the time set for hearing or any continuance thereof and set forth such person's request for Party or Limited Party status on the record. In requesting Party or Limited Party status, such person shall show:
 - (i) If seeking Party or limited party status to protect an alleged personal interest, the person must demonstrate such person's interest, economic, or otherwise, and how the result of the hearing may affect such interest.
 - (ii) If seeking Party or Limited Party status to represent an alleged public interest, the person must demonstrate the nature of the alleged public interest, how such interest may be affected by the results of the hearing, and such person's qualifications to represent such public interest.
 - (iii) Additionally, any person seeking Party or Limited Party status must demonstrate why the existing Parties, including the City, may not adequately represent the interest identified in Rule 6.B(i) or (ii) above.
- C. In lieu of or in addition to appearing at the time set for hearing, a Party seeking Party or Limited Party status may file a petition with the Hearings Office requesting Party or Limited Party status via the e-Filing System. Such petition shall include a statement of the matters as required by Rule 6.B(i), (ii) or (iii) above and, in addition, provide petitioner's name and address, and the name and address of petitioner's attorney, if any, and of any organization petitioner represents. Such petition must be filed with the Office of the Hearings Officer not later than the time set for the hearing.
- D. If a person is granted Party or Limited Party status, the Hearings Officer may postpone or continue a hearing to a later date. The Hearings Officer may do so if it appears that commencing or continuing the hearing on the date set would jeopardize or unduly burden one or more of the Parties in the proceeding.
- E. The Hearings Officer will grant the request for Party or Limited Party status if the Hearings Officer determines:
 - (i) Such person has demonstrated a personal or public interest which reasonably could be affected by the outcome of the hearing, and

- (ii) Such person's interest is not, in the Hearings Officer's opinion, adequately represented by existing Parties, and if appropriate,
 - (iii) Such person is qualified to represent the public interest.
- F. In granting Limited Party status, the Hearings Officer shall set forth the area(s) of and/or manner of participation.
- G. The Hearings Officer's ruling on a petition for Party or Limited Party status shall be on the record at or immediately prior to hearing.

Rule 7. CONTINUANCES, CONFERENCES, AND RECESSES

- A. **Continuances.** If, on the motion of any Party or upon the Hearings Officer's own motion, it appears further testimony, evidence or argument should be received, the Hearings Officer may, at the Hearings Officer's discretion, continue the hearing. The time and date of such continued hearing may be determined at the time of hearing or by later written notice to the Parties.
- B. **Conferences and Recesses.** In addition to the pre-hearings conference mandated by Rule 3.H., at any time during a hearing, the Hearings Officer may recess the hearing to conduct such a conference. The results of any such conference shall be summarized upon the record.

Rule 8. CONDUCT OF HEARINGS

- A. The hearing shall be conducted by and under the control of the Hearings Officer. At the discretion of the Hearings Officer, the hearing may be conducted in the following manner:
 - (i) The Hearings Officer may open the hearing with a brief introduction of the Parties, issues and procedures.
 - (ii) Each Party may be given an opportunity to make an opening statement.
 - (iii) The Initiating Bureau shall present evidence in support of the allegations contained in the complaint and in support of the relief requested, or, in the case of an appeal, the allegations in their Determination.
 - (iv) The Respondent(s) shall present evidence in support of their positions.
 - (v) Other Parties including those with Limited Party Status, may present evidence in support of their respective positions.

- (vi) Each Party shall have the right to cross examination of adverse witnesses.
 - (vii) The Parties may present rebuttal evidence, if any.
 - (viii) Each Party may be given an opportunity to make a closing statement.
 - (ix) The Hearings Officer shall have the right to question any witnesses.
- B. As outlined in Rule 5.C(vi), the burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.
- C. The Hearings Officer may set reasonable time limits for oral presentation and testimony and shall exclude or limit cumulative, repetitious, or immaterial matters or material.

Rule 9. RULES OF EVIDENCE

- A. All evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs will be admissible.
- B. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. In appeal cases, evidence that is shown to not have existed as of the date of a bureau’s Determination will be deemed irrelevant and shall be excluded.
- C. All timely offered evidence, not objected to, will be received, subject to the Hearings Officer’s power to exclude irrelevant or unduly repetitious matters or material.
- D. Evidence objected to may be taken by the Hearings Officer. Rulings on admissibility or exclusion will be made at hearing or at the time the order is issued.

Rule 10. WITNESSES

- A. A list of witnesses expected to be called during a hearing will be provided to the Hearings Office and other Parties via the e-Filing System at least two business days in prior to the hearing.
- B. All testimony given at the hearing shall be under oath or affirmation. The oath or affirmation may be administered by the Hearings Officer or by any other person authorized to administer oaths and affirmations under state law.

Rule 11. EXHIBITS

- A. Exhibits shall be marked upon receipt and the marking shall indicate the Party offering the exhibits. The exhibits shall be preserved as a part of the record of the proceeding. Evidence other than oral testimony or in writing may be offered, and will be admitted in any format, subject to the following limitations:
- (i) If equipment, technology, or computer programs are required to access or present evidence, the person offering such evidence is responsible for providing and setting up the equipment or programs. Set up must be done before the scheduled start time of the hearing and must not disrupt the hearing process. Such equipment, technology or computer programs shall be removed immediately after the hearing concludes. The Hearings Office does not supply equipment, technology, or computer programs (including, but not limited to projectors and computers).
- B. The Hearings Officer will consider evidence presented before or during the hearing, but will not attempt to open any computer DVD/CD/phone/thumb-drive and/or computer program unless the format is compatible with current Hearings Office technology and does not require installing or downloading an operational program. Hard copies of presentations (including, but not limited to photos and PowerPoint presentations) are recommended as a supplement to presentations made via computer/DVD/CD/phone/thumb-drive files and programs.
- C. The Party offering an exhibit shall ensure that any documents submitted do not include Confidential Information. The offering Party shall redact (black out) all Confidential Information prior to submission to the Hearings Office.

Rule 12. STIPULATIONS

The Parties to a proceeding may agree upon some or all the facts involved in the proceeding. Such stipulation shall either be in writing and subscribed by the Parties or be made at the hearing and on the record. The stipulation shall be binding upon the Parties who agree to it and may be regarded and used as evidence at the hearing.

Rule 13. EX PARTE COMMUNICATIONS

The Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications on a fact at issue made to the Hearings Officer while the proceeding is pending. All Parties appearing at a hearing shall be given notice of such ex parte communications and of their right to rebut the substance of the ex parte communication on the record.

- (a) After the commencement of the proceedings (the filing of an appeal request or Code enforcement complaint), a Party communicating in writing with the Hearings Office

about the proceeding must simultaneously send a copy of the written communication to all Parties or their representatives if an appearance has been made.

(b) A Party must give prior written notice to all Parties or their representatives, and the relevant City bureau, of any oral communications with the Hearings Officer regarding a pending matter. The other Parties or their representatives must be given the opportunity to participate in the communication. The Hearings Officer will generally have no oral communication with a Party outside of a scheduled hearing.

Rule 14. CONTINUING ORDERS

- A. If, after hearing, the Hearings Officer determines that a Respondent has violated any provision of the City Code and that the violation or violations are continuing, the Hearings Officer may enter a continuing order and continue the proceeding to a later date.
- B. The continuing order shall be in writing and shall conform in all particulars to a final order. The continuing order may order any of the remedies authorized by PCC 22.05.010 necessary or appropriate to correct the violation. In addition, the continuing order may provide that, in the event the Party or Parties found in violation correct, remedy, or eliminate the violation or violations in the manner and within the time or times specified by the Hearings Officer in the continuing order:
 - (i) The proceeding will be dismissed;
 - (ii) Any civil penalty imposed by the Hearings Officer will be suspended, reduced, or eliminated; or
 - (iii) Any or all other remedies awarded by the Hearings Officer will be suspended, reduced, or eliminated.
- D. Continued Hearing.
 - (i) At the time set for continuances, the Hearings Officer may hold a hearing to determine compliance with the terms of the continuing order.
 - (ii) If it is determined that the continuing order has been or is being substantially complied with in all its particulars, and the continuing orders so provides, the Hearings Officer shall enter a final order dismissing the proceeding or suspending, reducing, or eliminating the civil penalty or other remedies, as specified in the continuing order.

(iii) If it is determined that a Respondent is not in substantial compliance with the continuing order, the Hearings Officer may, in the Hearings Officer's discretion:

(1) modify the continuing order and continue the matter to a later date, or,

(2) vacate the continuing order, enter a new continuing order or continue the matter to a later date, or

(3) enter a final order.

E. Any continuing order may be amended at any time prior to entry of a final order upon the motion of a Party and for good cause shown. Good cause shall include, but is not limited to, a showing that a Party found in violation is unable to correct the violation and comply with the terms of the continuing order despite all reasonable diligence for reasons beyond such Party's reasonable control.

Rule 15. PROPOSED AND FINAL ORDERS

A. Proposed and Final Orders shall be in writing and include the following:

(i) Rulings on admissibility of evidence which were not made on the record during the hearings.

(ii) Findings of Facts: Those matters which are either agreed by the Parties or are determined by the Hearings Officer on substantial evidence.

(iii) Conclusions of Law: Applications of the controlling law to the facts found and the legal conclusions arising therefrom.

(iv) An order, which shall set forth the actions to be taken as a result of the Findings of Fact and Conclusions of Law.

(v) A notice that the Final Order may be appealed, and a reference to the ordinance under which it may be appealed or reviewed.

(vi) At the discretion of the Hearings Officer, an opinion explaining the rationale for the Findings of Fact or Conclusions of Law.

B. Rulings on evidence, findings of fact, and conclusions of law made in prior written orders or on the record at hearing may be incorporated by reference in a proposed and final order.

- C. Parties who have not previously waived their right to notice shall be served with a copy of the proposed and final order. Such Parties may file written exceptions to the proposed within 14 days of the date of the order.
- D. The Hearings Officer shall prepare and mail to all Parties, a proposed order. 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 a Party raises exceptions or otherwise seeks modifications to the proposed order within 14 days. The Hearings Officer may issue a revised order correcting any finding of fact or conclusion of law on its own initiative, or based upon exceptions and argument presented by a Party. If the Hearings Officer determines that the health, safety or welfare of the public or any person requires, in accordance with PCC 22.03.100, the Hearings Office may have the order become effective within a period shorter than 14 days.
- E. A proposed order may be withdrawn at any time before it becomes a final order.

Rule 16. Requests to Reopen the Record after the Hearing is Closed; Continuing Jurisdiction.

The Hearings Officer may reopen a Hearing record for reconsideration or rehearing based on a finding of good cause shown.

- A. A Party may file a petition for reconsideration or rehearing of a proposed order within 30 calendar days after the order is issued. A copy of the petition shall also be delivered or mailed to all Parties or other persons. The petition shall set forth the specific grounds for reconsideration or rehearing, both legal and/or factual, and shall provide appropriate references in the record. The petition shall be supported by a written argument. The Hearings Officer may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied 14 days after receipt by the Hearings Office unless otherwise informed.
- B. Within 30 days after the order is served, the Hearings Officer may, on its own initiative, reconsider the proposed order or rehear the case. A final order remains in effect during reconsideration or rehearing until stayed or changed. Following reconsideration or rehearing, the Hearings Officer shall enter a new order, which may be an order affirming the existing order. Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review.
- C. Cases will not be reopened for reconsideration or rehearing more than 30 days after the Hearings Officer's Order.

- D. The Hearings Officer will not exercise jurisdiction over a matter for more than one year from the date the initial filing except upon a written request of a Party. Jurisdiction shall not exceed three years of the initial filing except upon good cause shown.

Rule 17. CIVIL PENALTIES: MITIGATING AND AGGRAVATING FACTORS AND SUSPENDED PENALTIES

- A. In establishing the amount of a civil penalty to be assessed in a Code enforcement case, the Hearings Officer may consider the following factors and shall cite those found applicable based upon evidence in the record:

- (1) Whether the Respondent has committed any prior City Code violation, regardless of whether any administrative, civil, or criminal proceeding was commenced therefore.
- (2) The history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct the violation.
- (3) The economic and financial conditions of the Respondent.
- (4) The gravity and magnitude of the violation.
- (5) Whether the violation was repeated or continuous.
- (6) Whether the violation was due to unavoidable accident or other conditions or circumstances beyond the Respondent's reasonable control, negligence, or an intentional act of Respondent.
- (7) The opportunity and degree of difficulty to correct the violation.
- (8) The economic or financial benefit accrued or likely to accrue to Respondent because of the violation.
- (9) The Respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed.
- (10) The cost to the City of investigation and correction or attempted correction of the violation.
- (11) Any other relevant factors.

- B. At hearing, the burden of proof and the burden of coming forward with evidence regarding Respondent's economic and financial condition shall be upon the Respondent. In the

absence of such showing by the Respondent(s), the Hearings Officer may presume that the economic and financial condition of the Respondent is such as would support the imposition of any civil penalty permitted by law.

- C. All or any portion of any civil penalty imposed by the Hearings Officer may be suspended upon such terms and conditions as the Hearings Officer may determine, including, but not limited to, that the Respondent(s) comply with all orders of the Hearings Officer, including payment of any unsuspended portion of the civil penalty or penalties awarded by the Hearings Officer and/or that the Respondent(s) not commit, suffer or permit any additional City Code violations for a designated period of time, or not to exceed one year.
- D. Civil penalties for violations occurring prior to filing the complaint shall not exceed the amount requested in the complaint or amended complaint. This shall not limit the authority of the Hearings Officer to assess greater or additional civil penalties for continuing violations in conjunction with a corrective or continuing order, provided that such order provides that if the violation or violations are corrected or cease as required by the order and the order otherwise complied with, such additional or greater penalty will be suspended or eliminated.

Rule 18. PAYMENT OF AND LIEN FOR CIVIL PENALTIES

- A. Civil Penalties in Code enforcement cases shall be due and payable by the Party or Parties found liable for the same at such time as specified in the order. Payments shall be made to the Hearings Office. All checks shall be made payable to “City of Portland.”
- B. Whenever a civil penalty may be made a lien upon real property, unless paid as specified in subsection A above, the Hearings Officer shall certify the amount to the City Auditor in the form set forth in Appendix D.

Rule 19. ASSESSMENTS OF COSTS INCURRED

- A. Whenever, as may be authorized by the City Code, the City shall incur any costs pursuant to Section 22.06.010 of the City Code, the bureau incurring such costs shall prepare a certified statement of costs in substantially the form set forth in Appendix E, which shall be served upon the owner(s) of the real property involved, personally or by registered or certified mail, return receipt requested. A copy of such form, with proof of service substantially in the form attached as Appendix E, shall be filed with the Office of the Hearings Officer. If the statement is served by mail, it shall be deemed served three days after mailing. If no objection is received within fifteen days from the date of service, the Hearings Officer shall certify such statement and forward it to the City Auditor.

- B. An owner may object to such statement by filing a written objection to such statement with the Office of the Hearings Officer within fifteen days after service. If such statement is received, the Hearings Officer shall set a hearing to hear and determine the objections.
- C. If, after hearing, the Hearings Officer determines that such statement, or any portion of it, is correct and proper, the Hearings Officer shall certify the statement, or so much of it as is found correct and proper, and forward it to the City Auditor.

Rule 20. PREPARATION AND CERTIFICATION OF THE RECORD

- A. Any Party desiring preparation and certification of the record or any portion thereof for the purposes of appeal or review shall file with the Office of the Hearings Officer a written statement requesting preparation and certification of the record and designating those portions of the record requested. Unless otherwise provided pursuant to Section 22.03.050(g) of the City Code, such statement shall be accompanied by a cash deposit in the amount of estimated cost of preparing the record or those portions requested, including the cost of transcribing the record of testimony, if necessary.
- B. Upon receipt of the statement and the cash deposit, the Office of the Hearings Officer will prepare the record or the designated portions thereof. If the cash deposit exceeds the actual cost of preparing the record, the record shall be certified and the excess refunded. If the actual cost of preparing the record exceeds the amount of the cash deposit, the Party requesting preparation of the record shall be notified of the deficiency and, upon payment of the same, the record shall be certified.

HISTORY

Attachments

Appendix A – Form Notice to Respondent

Appendix B – Form Complaint

Appendix C – Form of Return of Service

Appendix D – Form Certification of Civil Penalty and Lien

Appendix E – Form Certified Statement of Costs

Appendix F – Form Certificate of Service of Certified Statement of Costs

Summary of Significant Rule Changes

1. **Combined Rules.** Combines both rules for appeal hearings and code hearings into one set of rules. *See* Rule 1.
2. **Applicability.** Clarifies which rules apply to appeal or code enforcement hearings, or both. *See* Rule 1.C., Rule 3 (code enforcement) and Rule 4 (appeals); *see also* Rules 17-19 for code enforcement civil penalties and lien processing.
3. **E-Filing System.** Provides for processing of appeals and code enforcement cases via new electronic case management system. *See* Rule 1.
4. **Definitions.** Enhanced definitions section (Rule 2). Provides new definitions for:
 - a. De novo review
 - b. Confidential information
 - c. Ex parte
 - d. Stay
5. **Notice to Respondent.** The new rules create a “Notice to Respondent” that is required to be served along with a complaint and Notice of Hearing in Code enforcement cases. This document serves the same purpose as a summons in civil cases. It tells the respondent that they need to make an appearance or a decision will be made by default upon the City making a prima facie showing of a violation. *See* Definitions and Rule 3.C.
6. **Telephone Testimony.** Allows for witness to testify by telephone in limited situations with the prior approval of the Hearings Officer. *See* Rule 5.C(ii)
7. **Burdens of Proof.** Clarifies the burden of proof. *See* Rule 5.C(vi)
8. **Code Case Amendments.** Requires that any amended complaint be filed no less than 7 days prior to hearing. *See* Rule 3.A(iii)
9. **Hearing Memoranda.** Encourages parties to prepare and submit to the hearings office in advance of the hearing a memorandum outlining the law and facts they believe applicable to the outcome of the matter. *See* Rule 5.C(vii)
10. **Proposed Order Correction.** Clarifies the process for seeking a correction of a proposed order. *See* Rule 15.
11. **Case Reopening.** Provides clarification on the process for seeking to have a case reopened after issuance of the hearings officer order. *See* Rule 16.

12. **Confidential Information.** Creates provisions making it the primary responsibility of the parties to ensure that confidential information is not being submitted to the hearings office. *See* Rule 1 (definitions), Rule 4.A, 4.F(iii), and Rule 11

13. Appeal case specific changes (Rule 4):

- a. **Scope of Review.** Clarifies that appeal cases will be determined based on same information reasonably available to the parties at the time of the City's initial determination in cases where the bureau issued an internal administrative determination; generally, no new evidence. *See* Rule 4.A(iii)(1)a
- b. **Limited Discovery.** Rule related to limited nature of discovery in appeals of administrative review decision remains. *See* Rule 4.F. Limited discovery prevents an appeal case from becoming a code enforcement case. A code enforcement case looks at current and future conduct. An appeal case primarily looks at past conduct.

14. Code enforcement specific (Rule 5):

- a. **Pre-hearing Conferences.** Requires mandatory pre-hearing conferences in Code enforcement case to occur at least 7 days prior to hearing, which may be conducted via telephone. *See* Rule 3.H
- b. **Amending Complaints.** Amended complaint no less than 7 days prior to hearing. Rule 3.A(iii)
- c. **Service of Complaint and Notice of Hearing.** Bureau shall be responsible for serving complaint and notice of hearing on all parties; the hearings office will send notice of hearing to parties if hearing is rescheduled. Rule 3.E
- d. **Service by posting.** Revises rule related to service by posting in code enforcement case to now require follow-up mailing. *See* Rule 3.E(ii)
- e. **Service generally.** Provides more specificity regarding service of process on parties. Rule 3.
- f. **Code Enforcement Forms.** Provides updated Appendix of forms. Appendix A-F, including certification for service of certified statement of costs seeking additional civil penalties