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**ARA 3.12  
CIVIL SERVICE APPEALS**

**A. Purpose**

This rule outlines the Auditor’s Office’s rules and procedures for Civil Service appeals. These procedures serve the same function as the City-wide rules and procedures set forth in [City of Portland Human Resources Rule 3.15 - Civil Service Board](#). However, Auditor’s Office appeals are heard by a neutral, independent Hearings Officer, instead of the City’s Civil Service Board, pursuant to City Charter Article 5, Section 2-506(b). The City Auditor has determined that a different process, including the use of a Hearings Officer instead of a board appointed by the Mayor and approved by Council, is needed to avoid impairing the Auditor’s independence.

**B. Definitions**

For purposes of this rule, unless applicable law requires otherwise:

1. “Appellant” means the party that files an appeal.
2. “Burden of proof” means the duty to produce enough evidence to prove a claim.
3. “Certificate of Service” means a document filed with Operations Management that certifies that a copy of the document has been served on the opposing party(s). A sample fillable [Certificate of Service](#) is available on the [City of Portland Civil Service Board Fillable Forms Google Drive](#).
4. “Good cause” means a substantial and compelling reason, and may include but is not limited to a reason that is beyond the control of a party. The Hearings Officer will consider good cause on a case-by-case basis, with an aim toward making decisions as consistent and uniform as possible.
5. “Jurisdiction” means the power and authority given to the Hearings Officer to hear and determine the merits of an appeal pursuant to this rule.
6. “Representative” means an attorney representing the Appellant or Auditor’s Office, or the Auditor’s Office’s non-attorney representative.

### **C. Applicability and Types of Appeals**

1. This rule applies to permanent, non-probationary, non-represented employees in the classified service of the Auditor’s Office (“employees”). Positions excluded from the Auditor’s Office classified service are listed in [Auditor’s Office Administrative Rule 3.08 – Classification and Compensation, Chapter VI: Classification](#).
2. Disciplinary Action Appeals (Appeal of Suspension, Demotion, or Discharge)
  - a. A disciplinary action appeal may be made by an employee subject to a disciplinary suspension, demotion, or discharge.
  - b. A disciplinary action appeal must allege facts showing that the disciplinary action was:
    - i. for a political or religious reason,
    - ii. not for cause, or
    - iii. not made in good faith to improve public service.
3. Classification Decision Appeals
  - a. A classification decision appeal may be made by an employee who is adversely affected by a change in classification, an employee whose request for a change in classification was denied, or a Division manager who disagrees with a final classification decision.
  - b. A classification decision appeal must allege facts showing that the decision was:
    - i. without a rational basis,
    - ii. contrary to law,
    - iii. contrary to an Auditor’s Office classification rule, or
    - iv. taken for a political reason.

### **D. How to File and Serve Documents**

1. To file a [Notice of Appeal](#) or to serve any other document on the Auditor’s Office, the Appellant must deliver the document to Operations Management or the Chief Deputy Auditor by email in PDF to [AuditorsOfficeAppeals@PortlandOregon.gov](mailto:AuditorsOfficeAppeals@PortlandOregon.gov). In all places where this rule refers to “Operations Management,” if the Notice of Appeal is addressed to the Chief Deputy Auditor, then “Operations Management” should be read to mean the Chief Deputy Auditor.

2. To serve a document on the Appellant, the Auditor’s Office must deliver the document to the Appellant by the Appellant’s preferred method of service as identified in the Notice of Appeal (email or first-class mail) at the address provided in the Notice of Appeal.
3. The Hearings Officer, once selected, will direct the parties as to how to file documents with the Hearings Officer. Unless directed otherwise, the parties may file documents with the Hearings Officer by email (except for hearing exhibits), to an email address provided by the Hearings Officer.
4. All documents filed with the Hearings Officer must be served on the opposing party and must be filed with a [Certificate of Service](#).
5. If a representative will appear for a party, as soon as reasonably possible the representative must file a [Notice of Appearance](#) with the Hearings Officer (with service on the City Auditor), which provides the representative’s address of record and preferred method of delivery of service for purposes of these rules.

#### **E. How to Appeal: Form and Deadlines**

1. Appeals must be made in writing using the [Notice of Appeal](#) form.
2. A Notice of Appeal must be filed:
  - a. Within 21 calendar days of the effective date of a disciplinary action or
  - b. Within 21 calendar days of a final written classification decision (*i.e.*, a decision denying a request for reconsideration of a classification decision).
3. If the deadline to file or serve a document falls on a Saturday, Sunday, or City-observed holiday, the deadline is extended to the next day the City is open for regular City business. For a list of City-observed holidays, see [Auditor’s Office Administrative Rule 3.06 – Leaves, Chapter III: Holidays](#).
4. A Notice of Appeal is considered filed when it is received by Operations Management.
  - a. The time limits for filing appeals set forth in this rule are jurisdictional; failure to comply with the time limits set forth in this rule deprives the Hearings Officer of jurisdiction to hear the appeal.
  - b. An appeal filed after the deadline will be dismissed.

5. The appeal deadline applies even if an employee did not know about a basis to appeal (i.e., there is no “discovery rule” tolling or extending the deadline).
6. Before appealing a classification decision, the employee must first ask the City Auditor to reconsider the decision.
  - a. The employee’s request for reconsideration must:
    - i. be in writing (email is acceptable),
    - ii. be delivered to the City Auditor within 30 calendar days from the effective date of the initial classification decision, and
    - iii. specify the reasons for the request and the relief being sought.
  - b. The City Auditor or designee must acknowledge the request for reconsideration within 14 calendar days of receipt of the request.
  - c. The City Auditor must issue a final classification decision within 30 calendar days of receiving a request for consideration. The City Auditor’s decision must be in writing, must explain the basis for the decision, and must notify the employee of the appeal process.
7. The Notice of Appeal must include a copy of the disciplinary action or final classification decision, and must specify:
  - a. The action or decision being appealed;
  - b. The effective date of the disciplinary action or the date of final written classification decision;
  - c. The reasons why the Appellant believes the action was:
    - i. *For a disciplinary action appeal*: made for a religious or political reason, was not for cause, or was not made in good faith to improve public service; or
    - ii. *For a final classification decision appeal*: without a rational basis, contrary to law or an Auditor’s Office classification rule, or taken for a political reason.
  - d. The remedy being requested; and
  - e. The Appellant’s contact information.

## **F. Processing Appeals**

1. Upon receipt of a Notice of Appeal, Operations Management or the Chief Deputy Auditor will determine whether the Hearings Officer has jurisdiction to hear the

appeal. The Hearings Officer has jurisdiction to hear appeals that fall within the scope of this rule and are filed by the applicable deadline.

2. If it is determined that the Hearings Officer lacks jurisdiction, that determination will be reported to the City Auditor. If the City Auditor concurs, Operations Management or the Chief Deputy Auditor will provide the appellant with written notice of the City Auditor’s decision dismissing the appeal and the right to seek judicial review in Multnomah County Circuit Court.
3. Unless the City Auditor dismisses the appeal for lack of jurisdiction under this rule, Operations Management will:
  - a. Provide the Notice of Appeal to the City Auditor and the appellant’s division manager.
  - b. Select and contract with a neutral, independent Hearings Officer to conduct the appeal.

#### **G. Determining the Appeal Hearing Format: Expedited or Formal**

1. Upon providing the Notice of Appeal to the City Auditor, Operations Management will notify the Appellant in writing that they have seven calendar days to request a formal or expedited hearing, titled a “Notice of Deadline to Request Hearing Type.” The notice must include the following information, as applicable:
  - a. *For disciplinary action appeals:* A formal hearing will be held unless both parties request an expedited hearing.
  - b. *For classification decision appeals:* An expedited hearing will be held unless either party requests a formal hearing.
  - c. The primary differences between the hearing types are that at an expedited hearing:
    - i. No party may be represented by legal counsel;
    - ii. There is no pre-hearing document discovery, although exhibits are still exchanged in advance of the hearing; *see* Sections K (discovery) and N (exhibits) below);
    - iii. Each party’s presentation of their case is limited to 90 minutes, *see* Section S below; and
    - iv. Some pre- and post-hearing deadlines are on shorter timelines, as provided throughout this rule; **see Timeline of Events and Deadlines at the end of this rule.**

2. The Appellant must communicate any hearing type request (expedited or formal) to Operations Management, in writing, within 14 calendar days from the date of Operations Management’s notice.
3. Operations Management must inform the Appellant and the Auditor in writing of the type of appeal hearing that will occur (expedited or formal) within 21 calendar days from the date of Operations Management’s notice.

#### **H. Hearings Officer Selection Process**

1. The Hearings Officer will be selected by Operations Management from a list of qualified individuals with a commitment to the principles of a merit-based employment system.
2. To obtain a list of qualified hearings officers, Operations Management may either:
  - a. At a time when there is no appeal pending, publicly request proposals from interested individuals; or
  - b. At any time, request from the Bureau of Human Resources a list of qualified hearings officers consistent with the list that would be provided upon request by the Civil Service Board pursuant to HRAR 3.15.

#### **I. Jurisdictional Decision by Hearings Officer**

1. At any time, upon motion by a party or on its own motion, the Hearings Officer may rule on its jurisdiction to hear the appeal under this rule. The Hearings Officer may, in its discretion, provide the parties an opportunity to submit written briefing on any jurisdictional questions. The timeline for such briefing shall be set by the Hearings Officer.
2. If the Hearings Officer dismisses the appeal for lack of jurisdiction, it will provide the parties with its decision in writing, including informing the parties of the right to seek judicial review in Multnomah County Circuit Court in accordance with ORS 34.010 - 34.100.

#### **J. Notice of Hearings**

1. The time and place of Civil Service appeal hearings will be set by the Hearings Officer. Expedited hearings will receive priority for scheduling over formal hearings.

2. The Hearings Officer will schedule the hearings and provide notice of the hearing to the parties as soon as possible. The Hearings Officer may coordinate with the parties for availability in scheduling.
  - a. *For expedited hearings:* The hearing notice must be provided no later than 21 calendar days before the hearing.
  - b. *For formal hearings:* The hearing notice must be provided no later than 60 calendar days before the hearing.

## **K. DOCUMENT DISCOVERY AND SUBPOENAS FOR DOCUMENTS OR WITNESSES**

“Document discovery” is the process for the parties to obtain documents from each other in advance of the hearing. A “subpoena” is a tool for compelling a third party (not the appellant or the Auditor) to provide documents or appear as a witness.

1. In expedited hearings, there is no document discovery. See Section N, below, for requirements on pre-hearing submission of hearing exhibits.
2. In formal hearings, the Hearings Officer may, in their discretion, establish a schedule with deadlines for completing any discovery. Any discovery schedule shall allow for the expeditious resolution of civil service appeals and avoid imposing any unreasonable or undue burden on any party or person subject to discovery.
3. Depositions shall not be allowed.
4. In formal hearings, a party’s document discovery rights are as follows:
  - a. Upon a party’s written request, which must describe the information requested and explain its relevance, the Hearings Officer may:
    - i. Issue an order requiring either party to produce a reasonable scope of relevant requested documents; or
    - ii. Issue subpoenas to a City Bureau or employee other than the Auditor compelling the production of relevant documents on a particular date.
  - b. Any relevant City documents from outside the Auditor’s Office shall be obtained through a public records request. Such records may be obtained by subpoena only upon a showing that they are not available by public records request.
5. On a party’s request made at any time, the Hearings Officer may enter a written protective order or take other measures to protect the confidentiality of documents.

The Hearings Officer may require the return or destruction of any documents ordered produced in the appeal.

6. Upon a party's written request, the Hearings Officer may issue a subpoena to compel the attendance of a material witness to provide relevant testimony at the hearing. The request must describe the witness and the relevance of their expected testimony.
7. The parties and the hearings officer may use the templates for subpoenas and subpoena applications on the [City of Portland Civil Service Board Fillable Forms Google Drive](#).
8. Timeline:
  - a. In a formal hearing, a discovery or subpoena request must be filed no less than 30 calendar days before the hearing.
  - b. In an expedited hearing, a request for a subpoena compelling the attendance of a witness must be filed within 2 business days after the hearing date notification.
  - c. Any written objections must be filed within 3 business days of the discovery or subpoena request.
  - d. An order or subpoena requiring the production of documents will direct the documents to be provided to the requesting party within 7 business days of the order or subpoena.
9. If the Hearings Officer denies a discovery or subpoena request, the Hearings Officer will provide the reason(s) for the denial. The Hearings Officer's decision is final.
10. Upon the Hearings Officer's decision to grant a request for issuance of a subpoena:
  - a. The Hearings Officer shall issue the subpoena within five business days.
  - b. The requesting party shall serve the subpoena as soon as reasonably possible and in time to give the subpoenaed party reasonable time to comply.
  - c. The requesting party, upon receiving subpoenaed documents, must serve a copy of all the documents on the non-requesting party.
11. Subpoena Service:
  - a. The requesting party must pay the applicable witness fee and mileage reimbursement upon serving the subpoena.
    - i. All witnesses who have been subpoenaed to testify are entitled to a witness fee of \$30 for each day's attendance as a witness and mileage reimbursement at



- the rate of 25 cents a mile if the person is required to travel in order to perform duties as a witness, in accordance with ORS 44.415(1).
- ii. No fees or reimbursement is required for subpoenas for only the production of documents.
- b. The requesting party may serve the subpoena(s) by one of the following methods:
- i. By hand delivering a copy of the subpoena to the subpoenaed party (or their authorized representative) and providing at the same time the fees to which the subpoenaed party is entitled, if applicable. Service of a subpoena by hand delivery is effectuated on the date that the subpoenaed party signs a Receipt of Subpoena form, in the format provided on the [City of Portland Civil Service Board Fillable Forms Google Drive](#). Hand delivery may be made by any person over the age of 18.
  - ii. By delivering a copy of the subpoena by certified or registered mail, with receipt delivery and signature requested, to the subpoenaed party's business address, along with the fees to which the subpoenaed party is entitled, if applicable. Service by certified or registered mail is effectuated on the date that the return receipt is signed by the subpoenaed party (or authorized representative).
- c. Once a subpoena is served, the requesting party must file a completed [Certificate of Service](#) with the Hearings Officer, in the format provided on [City of Portland Civil Service Board Fillable Forms Google Drive](#). The party must attach to the Certificate of Service the original subpoena, along with documentation that establishes the date, time, and method of service.

## L. PRE-HEARING MOTIONS

1. All pre-hearing motions must be filed with the Hearings Officer and served on the other party.
2. Pre-hearing motions include:
  - a. Motion to dismiss the appeal for lack of jurisdiction,
  - b. Motion to postpone the hearing,
  - c. Motion to extend a deadline, and
  - d. Motion for a protective order (to keep evidence confidential or to avoid providing certain evidence).
3. Motions for postponement of a hearing date or for an extension of time shall be made based on good cause shown, unless mutually agreed upon by the parties.

- a. The Hearings Officer has discretion to grant or deny a motion for postponement of a hearing or for an extension of time, and may, in its discretion, waive the requirements of this paragraph.
  - b. The Hearings Officer may, at any time, order a postponement on its own motion.
  - c. Absent extraordinary circumstances, the Hearings Officer will not allow more than one postponement.
4. The Hearings Officer may provide the parties a timeline for filing any pre-hearing motions. Unless otherwise stated by the Hearings Officer:
  - a. A response to a pre-hearing motion must be filed within seven calendar days of motion.
  - b. A reply to a response must be filed within three business days of the response.
5. If the Hearings Officer determines that oral argument is needed to resolve a pre-hearing motion, the Hearings Officer will schedule a date and time for a hearing and notify all parties of such date and time.
6. The Hearings Officer will issue a written ruling on all pre-hearing motions.

#### **M. PRE-HEARING DISMISSAL OF AN APPEAL**

1. The Hearings Officer may issue a Final Order dismissing an appeal, before a hearing has been conducted, for any of the following reasons:
  - a. The Hearings Officer has determined it lacks jurisdiction over the appeal.
  - b. The Appellant has voluntarily withdrawn the appeal. To withdraw an appeal, the Appellant or representative must file a Voluntary Withdrawal of Appeal and Order of Dismissal, in the format provided on the [City of Portland Civil Service Board Fillable Forms Google Drive](#).
  - c. The Appellant and the Auditor settle the appeal by mutual agreement. If an appeal is settled by mutual agreement, a Stipulation and Order of Dismissal, in the format provided on the [City of Portland Civil Service Board Fillable Forms Google Drive](#), must be filed with the Hearings Officer.
  - d. On the scheduled hearing date, the Appellant fails to appear within 30 minutes after the scheduled time of the hearing. If the Hearing Officer dismisses the appeal because the Appellant failed to appear:

- i. The Appellant may file a Motion to Reopen Hearing, in the format provided on the [City of Portland Civil Service Board Fillable Forms Google Drive](#), with the Hearings Officer within seven days from the date of the scheduled hearing. The Appellant must show good cause for the Appellant’s failure to appear at the date and time of the hearing.
  - ii. Upon a showing of good cause, the Hearings Officer may excuse an Appellant’s failure to appear and the hearing will be rescheduled.
  - iii. If, in the Hearings Officer’s discretion, oral argument is necessary before the Hearings Officer rules on the motion, they will schedule a date and time for oral argument.
  - iv. The Hearings Officer may consider the Appellant’s failure to appear for a scheduled oral argument on a Motion to Reopen Hearing as evidence in determining whether there is good cause for the Appellant’s failure to appear at the date and time of the hearing.
2. A Final Order dismissing an appeal is with prejudice; the appeal may not be refiled. However, such dismissals may be appealed through the writ of review process, in accordance with [ORS 34.010 - 34.100](#).

## **N. EXHIBITS**

The Hearings Officer may alter the rules in paragraphs 2-4 below in their discretion, upon their own motion or on request by either party.

1. All exhibits must be filed with the Hearings Officer and served on the opposing party.
2. Unless ordered otherwise by the Hearings Officer, exhibits must be filed:
  - a. At least 7 calendar days before an expedited hearing.
  - b. At least 14 calendar days before a formal hearing.
3. Unless ordered otherwise by the Hearings Officer, hearing exhibits must be submitted in the following format:
  - a. Exhibits must be printed and collected in a three-ring binder.
  - b. Exhibit sets must contain a cover page with a Table of Contents that lists and briefly describes each document (e.g., “Ex. 1: 01.01.2021 Auditor Email to Jones”).

- c. Each exhibit must be clearly marked indicating the party submitting the exhibit and the exhibit number (e.g., a footer stating “Appellant Ex. 1” and/or binder tabs indicating the exhibit number).
4. Unless ordered otherwise by the Hearings Officer, each party must file **two copies** of their exhibits with the Hearings Officer, and must serve the opposing party with one copy. One of the Hearings Officer’s copies will be used as needed to question witnesses at the hearing.
5. Exhibits that are not filed within the time frames or format required by this rule will not be considered by the Hearings Officer unless the Hearings Officer finds good cause for the untimely or improper filing.

#### **O. Witness List**

1. In formal hearings only, no more than 30 days before the hearing, upon a party’s written request describing the witness requested and the relevance of their testimony, the Hearings Officer may issue a subpoena to compel the attendance of a material witness to provide relevant testimony at the hearing.
2. In formal hearings only, each party must file with the Hearings Officer and serve on the other party a proposed witness list.
3. Witness lists must be filed and served at least 14 calendar days before the hearing.
4. The list must include a brief description of the general topic that each witness will address.

#### **P. Burden of Proof and Standard of Review**

1. Disciplinary action appeals:
  - a. The Auditor’s Office has the burden of proof.
  - b. The Hearings Officer will apply a “reasonable employer” standard of review to determine whether the employee’s conduct warranted discipline, and if so, whether the discipline imposed was objectively reasonable. (See [Appendix A to Human Resources Administrative Rule 3.15](#) for more information and discussion regarding the “reasonable employer” standard.)
2. Classification decision appeals:

- a. The Appellant has the burden of proof.
- b. The Hearings Officer will determine whether the classification decision was without a rational basis, contrary to law or Auditor’s Office classification rules, or taken for a political reason.

**Q. Stipulations: Agreed-Upon Facts and Issues**

Unless excused by the Hearings Officer, the parties are required to confer before the hearing in person, by telephone, or by videoconference to identify the relevant agreed-upon facts and issues.

1. At the request of either party, the Hearings Officer or their designee will schedule a mutually agreeable date and time for the conferral.
2. At the request of either party, the Hearings Officer or their designee will facilitate the meeting.
3. The parties are required to record all relevant agreed-upon facts and issues as a stipulation of facts and issues in the format provided on the [City of Portland Civil Service Board Fillable Forms Google Drive](#).
4. The stipulation will be entered as evidence at the hearing and is binding upon the parties.

**R. Conference During and Prior to Hearings**

1. The Hearings Officer may, at their discretion, call the parties together for a conference before the hearing or may recess the hearing for a conference to address undisputed or procedural matters.
2. If the Hearings Officer determines that a pre-hearing case conference is necessary, they (or their designee) will schedule the conference and notify the parties of the date, time, and location of the conference.
3. The results of conferences must be summarized by the Hearings Officer in a written order or verbally on the record at the hearing.

**S. Hearing Procedures, Generally**

1. Civil Service appeal hearings are normally open to the public. However, in discipline cases, the Appellant may request that the hearing be closed to the public.
2. Although appeal hearings are generally informal in nature, hearings will be conducted in a manner deemed by the Hearings Officer to make the relevant evidence most readily and efficiently available for the Hearings Officer's consideration and to give both parties a fair opportunity to be heard.
3. The Hearings Officer or a designee will administer an oath or affirmation to every witness consistent with ORS 40.320.
4. The Hearings Officer will open the hearing with a brief introduction of the parties and issues. During the hearing, the parties or their representatives may make opening statements, present evidence in support of their respective positions, make evidentiary objections, cross-examine the opposing party's witnesses, and make closing statements. The party who has the burden of proof presents its evidence first at the hearing.
5. The order of a hearing may be modified, or a different order established, if the Hearings Officer deems it necessary for the efficient, clear, and fair presentation of the evidence.
6. The Hearings Officer may, at their discretion, impose limits on the length of each party's presentation and the number of witnesses each party may call to testify. Provided, however, that at an expedited hearing each party is limited to 90 minutes of total presentation time (including argument and direct and cross-examination), unless ordered otherwise by the Hearings Officer.
7. The Hearings Officer may limit a party's direct or cross-examination of any witness if the Hearings Officer deems the examination or testimony redundant, irrelevant, immaterial, or otherwise unhelpful to the Hearings Officer in determining the issues.
8. During hearings, all parties, representatives, witnesses, and spectators must conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with this rule or with the Hearings Officer's efforts to maintain order and proper decorum are grounds for removal from the hearing.

9. A witness' refusal to answer a question ruled to be proper may, at the discretion of the Hearings Officer, be grounds for disregarding or striking all testimony previously given by the witness.
10. On the motion of a party or on the Hearing Officer's own motion, if it appears that further testimony or argument should be received, the Hearings Officer may, at their discretion, continue the hearing for good cause. The date of such continued hearing may be fixed at the hearing or later by written notice to the parties.
11. Any rulings on motions or evidentiary matters must be made on the record.

#### **T. Hearings Officer Decisions**

At the conclusion of the hearing, the Hearings Officer may, at their discretion, require the prevailing party to serve proposed findings of fact and conclusions of law on the Hearings Officer and all other parties within 7 calendar days. The opposing party will have 5 calendar days after service to file any written response. The Hearings Officer has discretion to modify the timelines in this paragraph and to dictate the scope, format, or length of the parties' submissions.

The Hearings Officer's final decision must be based solely on the record and applicable law, Auditor's Office rules, and other applicable legal authority. The decision must include findings of fact and conclusions of law.

##### 1. Decision Format and Procedure

- a. *Expedited Hearings*: At the conclusion of an expedited hearing, the Hearings Officer will normally render a decision orally (known as a "bench" decision), which must be made on the record. The Hearings Officer may choose to also issue a written decision.
- b. *Formal Hearings - Disciplinary Action Appeals*: At the conclusion of a formal hearing in a disciplinary action appeal, a party may request to file a post-hearing memorandum. The Hearings Officer may not arbitrarily deny such requests, but may limit the length and scope of the memorandum, as the Hearings Officer deems appropriate. The Hearings Officer will state when the final written decision will be issued.
- c. *Formal Hearings - Classification Decision Appeals*. The Hearings Officer will issue a written decision within 30 calendar days after a formal hearing in a classification decision appeal.

2. Decision Scope and Remedy -- Disciplinary Action Appeals

- a. The Hearings Officer will affirm the City Auditor’s disciplinary action if they find that the employee’s conduct warranted discipline and the discipline imposed was objectively reasonable, based on the “reasonable employer” standard. (See [Appendix A to Human Resources Rule 3.15](#) for more discussion and information on the reasonable employer standard.)
- b. If the Hearing’s Officer finds that some discipline was warranted, but that the discipline imposed was too severe, the Hearings Officer may order that the discipline be reduced or otherwise modified to a level appropriate for the offense, and may order that the employee be reinstated, with or without back pay, on terms and conditions that the Hearings Officer may establish.
- c. If the Hearings Officer finds that no discipline was warranted, the Hearings Officer may order that the employee be reinstated, with back pay and reinstatement of any fringe benefits lost because of the discipline. Deductions for unemployment compensation or other interim income received will be ordered, as decided by the Hearings Officer.

3. Decision Scope and Remedy – Classification Appeals

- a. The Hearings Officer will affirm the Auditor’s classification decision if the Hearings Officer finds that the decision was rational, lawful, within the Auditor’s Office classification rule, and not taken for a political reason.
- b. If the Hearings Officer finds that the classification decision was without a rational basis, contrary to law or an Auditor’s Office classification rule, or taken for a political reason, the Hearings Officer will set aside the classification decision and remand the decision back to the City Auditor for further review. The Hearings Officer’s order of remand must explain the reason for the decision.

**U. Appeal of Hearings Officer Decisions**

The Hearings Officer’s decision is final and binding on the parties, subject to an appeal to Multnomah County Circuit Court by writ of review under ORS 34.010 - 34.100.

**V. Record of Proceedings**

1. The Auditor’s Office will provide for a recording of the hearing, which must be either a verbatim written record or mechanical recording.
2. The record of each appeal hearing includes but is not limited to all written materials offered to the Hearings Officer (unless rejected by the Hearings Officer or withdrawn



by the offering party with the approval of the Hearings Officer), the Hearings Officer's final written decision, and the recording of the hearing.

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### **Auditor's Office Administrative Rule Information and History**

Questions about these administrative rules may be directed to the [Auditor's Office's Operations Management Division](#).

These rules were originally adopted by the City Auditor as AUHR 3.15 - Civil Service Appeals on December 11, 2017.

Adapted from [City Human Resources Administrative Rule 3.15 – Civil Service Board](#).

Adopted by Council on March 6, 2002 (Ordinance No. 176302). Last revised February 13, 2019.

Revised and adopted by the City Auditor as ARA 3.12 on *Click to enter date*.