

Title 3 Administration

Chapter 3.130 Administrative Appeals

3.130.010 Definitions

For the purpose of this Chapter:

- A. "Administrative Act" means a final action, decision, determination, or order of Council, a bureau, department, or office. Administrative acts do not include legislative acts of Council, any City employment action, decision, determination, or order, or any action, decision, determination, or order applying Title 33 of the Code.
- B. "Administrative Appeal" means appeals of administrative acts by appellants when the right to appeal is provided by Code or rule, and the Code or rule requires the appeal to be decided by a bureau, department, office, board, hearings officer, or Council acting in its quasi-judicial capacity.
- C. "Appellant" includes any person given the right to appeal an administrative act by Code or a rule. As used in this chapter, "appellant" does not include prospective, current, or former City employees contesting any administrative act related to their employment, employment benefits, application for employment, termination of employment, or internal complaint arising out of or connected with their employment.
- D. "Rule" means an administrative rule or bureau policy, as each term is defined in Section 1.07.020.
- E. "Timely" means that written notice is provided to the appellant in accordance with the time period specified in the Code or rule providing for the right of appeal. If the applicable Code or rule does not specify a time period, "timely" means that written notice is provided as soon as practicable after the right to request an administrative appeal is triggered but no later than:
 - 1. Three business days after the right to an administrative appeal is triggered, if the period during which the appellant may request an administrative appeal is less than 15 days; or
 - 2. Ten business days after the right to an administrative appeal is triggered, if the period during which the appellant may request an administrative appeal is 15 days or more.

3.130.020 Timely and Adequate Notification of Right to Appeal Required.

- A. Timely and Adequate Notification Required. When there is a right to appeal an administrative act through an administrative appeal, the bureau, department or office must provide timely notice to appellant in accordance with Subsection 3.130.020.B.

- B. Form and Content of the Notice. An adequate notice must:
1. Be in writing;
 2. Provide a short, plain statement describing the underlying administrative act and the basis for the administrative act, including citation to the applicable Code provision or rule;
 3. Explain any right to request an administrative appeal, including:
 - a. citation of the applicable Code provision or rule providing the right to appeal;
 - b. the time limit for requesting an administrative appeal, specifying calendar or business days;
 - c. the method for requesting an administrative appeal, including a City address and phone number;
 - d. the cost, if any, for requesting an administrative appeal, including accepted payment methods and whether there is a low-income fee waiver; and
 - e. disclosure of whether effect of administrative act will be stayed pending resolution of the requested administrative appeal.
- C. A bureau, department or office may adopt a rule specifying when and how notice of the right to request an administrative appeal will be provided so long as it is consistent with Subsections A and B of this Section 3.130.020.

Chapter 22.10

APPEALS TO THE CODE HEARINGS
OFFICER**Sections:**

- 22.10.010 Definitions.
- 22.10.020 Jurisdiction.
- 22.10.025 Notification of Right to Appeal; Enforcement; Remedies.
- 22.10.030 Initiation of Appeal.
- 22.10.040 Hearings.
- 22.10.050 Hearings Procedure.
- 22.10.060 Nature of Determination.

22.10.010 Definitions.

For the purpose of this Chapter:

- A. **“City bureau”** means and includes any bureau, division, board, committee, officer, agent, or employee of the City of Portland.
- B. **“Decision or determination”** means and includes any decision, determination, order, or other action of any City bureau. Decisions or determinations do not include any action, decision, determination, or order applying Title 33 or Chapter 16.30 of the Code.

22.10.020 Jurisdiction.

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

22.10.025 Notification of Right to Appeal; Enforcement; Remedies

- A. City bureaus shall give notice of the right to appeal to the Code Hearings Officer in accordance with Section 3.130.020.
- B. Where the Code, in accordance with Section 22.10.020, provides that an administrative appeal as defined in Section 3.130.010 is to be decided by the Code Hearings Officer, the Code Hearings Officer shall have the authority to enforce the requirements of Section 3.130.020 and may adopt evidentiary requirements by rule.

1. If, in deciding such an administrative appeal, the Code Hearings Officer finds that a City bureau has failed to provide notice in accordance with Section 3.130.020, the Code Hearings Officer may order a just and reasonable remedy related to the failure to provide notice, including remanding the administrative act that is the subject of the administrative appeal, reducing any fees and penalties associated with the administrative act, staying the effect of the administrative act pending the outcome of the administrative appeal, or invalidating the administrative act if failure to provide notice materially prejudiced the appellant. Nothing in this subsection shall be construed to allow the Code Hearings Officer to award monetary damages to the appellant.

22.10.030 Initiation of Appeal.

- A. Unless otherwise specified in this Code, a request for an appeal hearing shall be filed within 10 business days after the date of the decision or determination. The Code Hearings Officer may waive this requirement for good cause shown.
- B. The request for an appeal hearing shall be filed directly with the Code Hearings Office. The request shall be in writing and contain:
 1. either a completed appeal form the Code Hearings Officer shall create by rule;
 2. a copy of, ~~or a full and complete description of,~~ the decision or determination appealed from and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper; and
 3. together with such any other information as the Code Hearings Officer may by rule require.

~~The Code Hearings Officer may specify and provide hearing request forms to be used by persons requesting hearings.~~

- C. By presenting to the Code Hearings Officer an appeal or other paper – whether by signing, filing, submitting or later advocating it – a person or party certifies that to the best of the person’s or party’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 1. the appeal or paper is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase costs;
 2. the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

3. the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
4. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

D. The Code Hearings Officer shall adopt by rule no more than a nominal filing fee for an appeal hearing. Except for Section 24.55.200 of Code, this fee supersedes and replaces all other fee schedules to bring an appeal before the Code Hearings Officer provided for elsewhere in this Code or administrative rule. Filing fees are nonrefundable, and are paid directly to the Code Hearings Office.

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

22.10.040 Hearings.

- A. Upon receipt of a request for hearing, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 days after the receipt of such request.
- B. Notice of the time, date, and place of hearing shall be given to the person requesting the hearing and to the City bureau whose decision or determination is being appealed. Notice shall also be given to any person who reasonably appears may be adversely affected should the decision or determination not be sustained after hearing. The Code Hearings Officer may provide by rule for the manner of providing notice to such persons.
- C. The time for hearing may be extended by the Code Hearings Officer for good cause shown, upon such terms and conditions as the Code Hearings Officer shall deem just and appropriate.

22.10.050 Hearings Procedure.

- A. Hearings shall be conducted in accordance with the procedures set forth in Sections 22.03.050 to 22.03.115 of this Title.
- B. With the consent of all parties, the Code Hearings Officer may determine the matter without hearing upon the record.
- C. The Code Hearings Officer may sustain, modify, reverse, or annul the decision or determination appealed from or the Code Hearings Officer may remand the decision or determination to the City bureau for such reconsideration, additional

consideration, or further action as the Code Hearings Officer may direct.

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

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

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

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

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

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

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

22.10.060 Nature of Determination.

The determination of the Code Hearings Officer is a quasi-judicial decision and is not appealable to Council; appeals from any determination by the Code Hearings Officer shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100.