



## CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

### Ombudsman's Office

Margie Sollinger, Ombudsman

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*Amendments  
Accepted 5-20-15*



187151

May 14, 2015

TO: Mayor Charlie Hales  
Commissioner Amanda Fritz  
Commissioner Nick Fish  
Commissioner Dan Saltzman  
Commissioner Steve Novick

FROM: Margie Sollinger, Ombudsman

SUBJECT: **Administrative Justice Code Amendments**

This memorandum highlights changes to Exhibits A and B of the proposed administrative justice reform legislation, previous agenda item 417, based on the questions and concerns Council raised at the April 22, 2015 public hearing.

### Title 3 Revisions – Exhibit A

3.130.020 Timely and Adequate Notification of Right to Appeal Required.

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.

Title 22 Revisions – Exhibit B**22.10.025 Notification of Right to Appeal; Enforcement; Remedies**

- 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.**

- 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.

**22.10.050 Hearings Procedure.**

- 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.

## IMPACT STATEMENT

**Legislation title:** Amend Code to eliminate barriers to accessing administrative appeal processes, including establishing a minimum notice requirement and limiting fees charged to initiate an appeal (Ordinance; add Code Chapter 3.130; amend Code Chapter 22.10).

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**Contact phone:** (503) 823-4503

**Presenter name:** Auditor Hull Caballero and Margie Sollinger

### **Purpose of proposed legislation and background information:**

The proposed legislation reduces and eliminates barriers to accessing administrative appeals by establishing baseline requirements and protections. The proposed legislation is consistent with City policies to achieve equity, safeguard the rights of persons, and promote higher standards of justice in the provision of City services.

### **Financial and budgetary impacts:**

The proposed legislation restricts bureaus from charging fees to the public to initiate appeals to the Hearings Office. The bureaus that currently charge fees to the public do so based on cost-recovery objectives, since the Hearings Office, through interagency agreements, charges bureaus for the cost of the appeal hearing. The Auditor's FY 2015-16 requested budget and decision package seek to address the financial and budgetary impacts of the proposed legislation in a way that benefits the public and the bureaus.

Increasing notification requirements and eliminating financial barriers could impact the workload of the Hearings Office and may necessitate additional staffing. However, such impacts are unknowable at this time. Statistics on other types of hearings that have no fee to appellants indicate that less than 2% of cases result in an appeal to the Hearings Officer. Based on this information, the Auditor's Office does not believe there will be immediate, significant impacts to workload. The Office will closely monitor any changes to workload that result from this legislation.

### **Community impacts and community involvement:**

The proposed legislation was prompted by a series of complaints from members of the public to the Office of the Ombudsman.

The proposed legislation seeks to ensure that anyone who has a right to appeal a City decision both knows about that right and can afford to invoke it. By making administrative appeals

accessible to everyone, the proposed legislation addresses the disparate impacts of current policies on communities that historically have not had full and equal access to the City, as well as any other individual or entity that would be prevented from taking advantage of their appeal rights due to informational or financial barriers.

The following groups/individuals have been invited to testify: Office of Equity and Human Rights, Citizens' Utility Board, National Lawyers Guild, League of Women Voters, Rex Burkholder.

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES:** Please complete the information below.
- NO:** Skip this section

<b>Fund</b>	<b>Fund Center</b>	<b>Commitment Item</b>	<b>Functional Area</b>	<b>Funded Program</b>	<b>Grant</b>	<b>Sponsored Program</b>	<b>Amount</b>