

**ELIMINATE BARRIERS TO ACCESSING ADMINISTRATIVE APPEAL PROCESSES**

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

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**NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER**



POST OFFICE BOX 40723  
PORTLAND, OREGON 97240-0723

DATE: April 22, 2015

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

FROM: Portland Chapter of the National Lawyers Guild

CC: Auditor Mary Hull Caballero  
Ombudsman Margie Sollinger

RE: TESTIMONY TO CITY COUNCIL IN SUPPORT OF THE PORTLAND  
AUDITOR'S ADMINISTRATIVE HEARINGS OFFICE PROPOSAL

Dear Mayor Hales and City Commissioners:

The Portland National Lawyers Guild supports the Portland Auditor's proposal to amend the city code to improve administrative appeals. We strongly encourage City Council to adopt a minimum notice requirement, a nominal fee cap, and a fee waiver. These steps are critical for the City to accomplish its Hearing Officer purpose "to provide a fast, fair, and impartial adjudication of the alleged City Code violations; and to provide persons adversely effected by administrative determinations and decisions with an effective and, impartial appeal and review of the legality and appropriateness of the determination." Portland City Code §22.01.010. It is impossible to provide fair, impartial and effective reviews of city bureau without providing basic access to the system. The Auditor's proposal establishes this basic access to justice.

The United Nations defines "access to justice" as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards." Access to Justice Practice Note, United Nations Development Programme, 2004; Programming for Justice: Access for All: A Practitioner's Guide to Human

Rights-Based Approach to Access to Justice, United Nations Development Programme, 2005. Barriers to access to justice include financial inaccessibility and lack of knowledge regarding one's rights.

As it currently stands, a \$1,000 hearing fee makes City appeals financially inaccessible to a large percentage of Portland area residents. In 2008, 26.7% of people of color and 11.7% of white people in Multnomah County were living in poverty. Communities of Color in Multnomah County: An Unsettling Profile, Coalition of Communities of Color, *available at* <http://tinyurl.com/p769yrv>. A person making minimum wage in Portland would have to work more than 108 hours to fund a \$1,000 hearings office appeal. In comparison, a person who wanted to file a civil claim in state court for \$10,000 or less would only have to pay \$158 or apply for a fee waiver or deferral.

Furthermore, the hearings fee makes the appeal process pointless for any violation that comes with a fine of less than \$1,000. Any time a fee to resolve a dispute is equal to or exceeds the amount in controversy, it is against the individual's financial interest to right a wrong. There should be no penalty for accessing a review process.

While mandating a fee can be perceived as a deterrent to filing frivolous appeals, that perception misses the mark on the full value of an appeals process. Central to a fair appeals system is the notion of procedural justice. When an individual feels wronged, the opportunity to be heard is critical to the perception of fairness. Research has shown that procedural justice leads to "an increased satisfaction with and acceptance of decisions and outcomes, and enhanced obedience to laws" even where the outcome is not favorable to the individual. Klaming, Laura & Ivo Giesen, Access to Justice: the Quality of Procedure, TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 002/2008, *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1091105](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091105). People are much more likely to perceive procedures as fair if the procedure allows them voice—the opportunity to present their case.

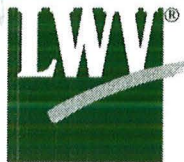
The Portland Auditor's proposal gives voice to Portland residents. It provides the opportunity to appeal, through notice, and the ability to appeal, through a nominal fee cap and waiver. This procedural fairness provides access to justice to many Portlanders who are currently denied such access. Any concerns regarding frivolous appeals can be remedied by other means,

such as proper screening of complaints. On behalf of the Portland National Lawyers Guild, I urge you to decrease the barriers to administrative appeals in our City by adopting the Auditor's proposal in full.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristen Chambers', with a long horizontal flourish extending to the right.

Kristen Chambers  
Portland NLG Policy Board Member



## The League of Women Voters of Portland

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DATE: April 20, 2015

TO: Mayor Hales, Commissioners Fish, Fritz, Novick, and Saltzman

FROM: League of Women Voters of Portland  
Margaret Noel, Co-president  
Mary McWilliams, Action Committee member

CC: Auditor Mary Hull Caballero  
Ombudsman Margie Sollinger

RE: **Auditor's Administrative Justice Reforms**

The League of Women Voters of Portland wholeheartedly supports the Ombudsman's and Auditor's proposed reforms to the city's administrative appeals processes. As an organization that places a high value on a citizen's right to know, transparency, and accountability, we believe the recommended legislative changes are appropriate and we urge you to adopt them.

When the right to appeal a city bureau's decision exists, that right and the steps needed to initiate an appeal should be clearly stated in the bureau's written communications with the public. Multiple inquiries to bureau staff and City Council offices should not be necessary for a community member or business owner to understand that they have that right and how to access it.

The cost of appeals is another issue that the proposal addresses. Currently, the system is based on a cost recovery model. It is possible for a Portland resident or business owner to spend more money to appeal a city decision than the dollar amount in question. We support adoption of a nominal fee for all appeals. This approach eliminates the need to consider the cost when appealing a city decision and opens the door to individuals and businesses to appeal city decisions regardless of means. CUB's suggestion that the city explore the option of charging different fees for commercial vs. residential customers merits your consideration.

In evaluating this proposal, City Council should keep in mind the opportunity it provides to enhance services. As the League has followed closely the city's police oversight system, we have become aware of the potential to improve city services through consideration of community complaints. If the appeals processes offered by other city bureaus are made more readily available to residents and businesses, through both notification and nominal fees, city bureaus

will be able to gain a greater awareness of shortcomings in their policies and decision-making processes. The League trusts that they will use the lessons learned to improve the policies and their implementation.

Thank you for considering our views on this important issue. The League urges you to support the Ombudsman's and Auditor's proposed changes to the city's appeals processes.



**OFFICE of EQUITY  
and HUMAN RIGHTS**  
CITY OF PORTLAND

Realizing Equity. Enhancing the City of Portland.

**Commissioner in Charge:**  
Charlie Hales, Mayor

**Bureau Director:**  
Dante J. James, Esq.

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

From: Dante J. James

Re: Equity Efforts in City's Appeal Processes – Letter of Support

Date: April 9, 2015

The Office of Equity and Human Rights fully supports the efforts of the city's Ombudsman to institute equity across the various appeal processes that exist across city bureaus: minimum requirements for providing notice, addressing the fee for appeals, and ensuring that fee waivers are available for those unable to afford any fee for filing an appeal.

Adequate notice and the ability to access one's rights, regardless of economic status, are fundamental aspects of due process and fairness. The uniqueness of our form of government allows bureaus to act independently in many aspects of their policies and practices. This results in both benefits and burdens to residents impacted by bureau action. In the specific instances noted here, the burdens are the lack of any notice in some instances and appeal rights that are so difficult to find as to be non-existent. This could result in the loss of a right to appeal if an appeal is not timely filed due to failure to provide notice, or a lack of knowledge about the process.

Further, the fee for appealing some bureaus' actions is more than \$1300. This amount is often so much more than the cost of the actual charge by the city as to make any appeal nonsensical. Finally, there is no waiver for those unable to afford an appeal. A fee waiver is an important aspect to making the process equitable for all, economic status notwithstanding.

Many of those community members impacted by such issues as towing, a collection action, weed citations or a sidewalk notice of repair, are those who may be from a low income community of color, refugee and immigrant populations, or those with a disability; individuals who are either unfamiliar with our system of government, distrusting of government in general, and/or have historically been ignored by government. Enacting



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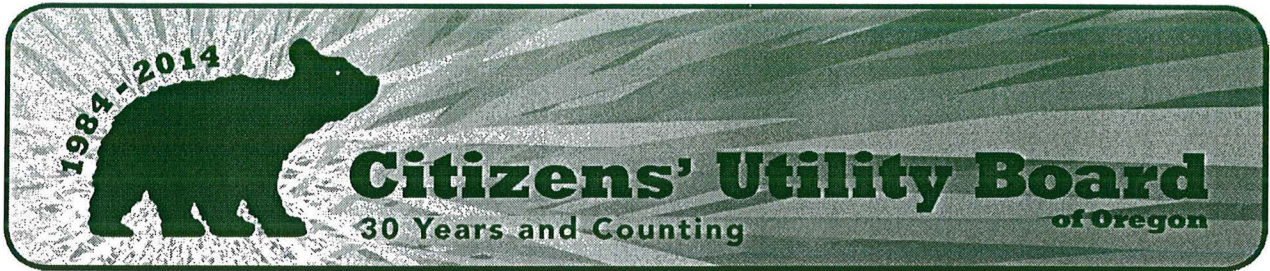
**Commissioner in Charge:**  
Charlie Hales, Mayor

**Bureau Director:**  
Dante J. James, Esq.

the changes would create an equal opportunity for everyone to access city government in a meaningful way.

For these reasons, the Office of Equity and Human Rights supports the Ombudsman's efforts to create greater access and equity in the city's appeal processes.





April 16, 2015

To: Honorable Members of the Portland City Council  
 From: Janice Thompson, City of Portland Public Utilities Consumer Advocate  
 Re: Support for City Auditor's Administrative Justice Reforms

CUB supports and urges that the City Council support the administrative justice reform proposal from the City Auditor and Ombudsman Office. The two key elements in the Auditor's proposal, providing adequate and timely notice of the right to appeal and revamping the method to pay the Code Hearings Office (CHO) for appeals, are critical steps. Government accountability is of particular importance to CUB in terms of the Portland Water Bureau (PWB) and Bureau of Environmental Services (BES), but we also suggest consideration of citywide efforts related to dispute resolution assessment and improvements.

Timely Notice of Right to Appeal

Administrative decisions, particularly those related to billing disputes, can have a significant impact on the well-being and wallets of individual Portlanders, especially low income residents. This is why appeals procedures are so important. However, the ability to contest administrative decisions is worthless if the public is not told of their appeal options.

Appropriately, the Ombudsman's proposal applies to all city bureaus. CUB's focus is on the PWB and BES, but as bureaus with significant interaction with the public they receive a significant proportion of city complaints. To their credit, PWB and BES have established Administrative Review Committee (ARC) procedures related to billing issues. More recently BES has begun using ARC meetings regarding other types of customer disputes with continued evaluation of those procedures. The Auditor's Code Hearings Office is also an appeals option offered to utility bureau customers.

The Ombudsman sought input from PWB and BES during development of this administrative justice proposal. That effort is appreciated since the experience of the utility bureaus regarding billing and other types of appeals can be helpful to other bureaus. Nevertheless, PWB and BES can also learn from their counterparts and continue improving their procedures.

For example, CUB has gotten calls related to utility administrative decisions where:

- an appeals option was not presented
- what was required to initiate an the appeals process was not made clear
- scheduling of an appeal was not timely

In other words, PWB and BES, even with more extensive experience regarding customer disputes of administrative decisions, would benefit from a minimum appeals notification standard.

Another issue is the challenge of identifying what appeals process applies to an individual situation. For example, BES has a range of administrative rules and it can be confusing to a customer to determine which rule or rules apply to their particular dispute. However, BES is currently doing an internal assessment of its rules and administrative dispute options which should help clarify their procedures. This effort deserves replication in other bureaus since it should not be up to individual Portlanders to review administrative rules in search of the appropriate option to contest an administrative decision. This is a particular concern for Portlanders for whom English is not a first language or for whom access to or acumen using technology is limited.

Governmental accountability and building public trust is a multi-faceted challenge, but one critical element is clarity and fairness regarding appeals procedures. Instead of being viewed as a hassle or burden on the bureaus, effective appeals procedures offered in a clear and timely fashion should be viewed as program improvement opportunities.

#### Revamp Method to Pay Code Hearings Office for Appeals

The current practice of city bureaus setting their own fee for code hearings to cover the costs they are charged by the CHO has contributed to two concerns.

- Inconsistency in how much Portlanders may be charged for a CHO appeal.
- Significant fees for appeals to CHO, with some as high as \$1,368, create an inappropriate financial barrier to seeking impartial review of an administrative decision made by a city bureau.

Addressing these concerns, however, must be:

- Fiscally responsible for city agencies, which in the case of the utility bureaus means being vigilant about fiduciary responsibility to ratepayers.

Reconciling these three bullet points is the challenge.

The current funding approach for the CHO to be paid by the bureaus is an inappropriate application of the cost recovery model because though it addresses the third bullet point, it creates the concerns outlined in the first two bullet points.

The CHO provides a beneficial oversight service available to all City bureaus so funding through the general fund overhead model seems appropriate to CUB. It is also worth noting that this is the funding method used in essentially all other municipalities. Since the utility bureaus contribute to the general fund overhead, they should not be treated differently regarding general fund support for the CHO to provide appeal services.

It is appropriate to test this change in funding CHO for appeals of city bureau administrative decisions by taking the approach requested by the Auditor for a fiscal year 2015-16. The Auditor's budget proposal is for a one-year replacement with general fund dollars of the intergovernmental agreements used by bureaus to pay for these appeal services. During the next fiscal year concerns such as a possible increase in frivolous appeals can be assessed.

The definition of frivolous appeals must be carefully determined, however, since there can be an “in the eye of the beholder” dynamic to this assessment. Also if there is an increased number of appeals that are consistently upheld by CHO on behalf of the city bureau, the pertinent agencies may want to evaluate appeal thresholds and any pre-CHO administrative appeals procedures. Conversely, if an increased number of appeals (especially if they can be linked to reducing financial barriers) result in reversal of city agency decisions, then that is information that should be used to assess administrative rules and any pre-CHO appeals procedures. Finally, if there is an increase in frivolous appeals, addressing this issue should consider how this dynamic is handled in the legal world where court filing fees are frequently lower than what currently is charged to appellants for CHO appeals. In other words, don’t assume that if frivolous appeals occur that they should be addressed with higher fees.

A change from the status quo, however, is required and the Auditor’s one-time request is a needed bridge to determining a way to fund the CHO that, in turn, facilitates the assessment of fair fees for Portlanders who wish to pursue appeals of administrative decisions. The fiscal year 2015-16 funding change requested by the City Auditor is also consistent with the Mayor’s equity and opportunity budget priorities which is another reason for CUB’s support.

CUB also supports the proposal for a nominal fee for appeals made to the Code Hearings Office to ensure some “skin in the game” on the part of the appellant. However, the \$25 suggested by the Auditor’s office seems low, especially if a low-income waiver is provided, an option CUB supports.

Where to set this nominal fee could be informed by the experience of the PWB which recently established a \$50 fee for CHO appeals regarding billing disputes. This is evidently an interim step by PWB since they have come to realize that a hearings officer appeal would be meaningless if they charged the customer the \$1,300 they are charged by CHO. It is appropriate that PWB view this as an interim step since it doesn’t address the concern of fiduciary responsibility to ratepayers. PWB is to be commended for addressing bullet point number two by taking this interim action. This proactive step should be matched with the shift to general fund support for this CHO function to ensure meeting the fiduciary responsibility goal in the third bullet point. Since PWB has already taken this interim step, their experience with a \$50 fee should be reviewed in setting the nominal fee proposed by the Auditor.

Fees charged to appellants should be set at a consistent and standard level to address the first bullet point, but CUB sees the possible need for different (but still consistent and standard) fees for different types of appeals based on complexity and impact on the agency. For example, BES has enforcement responsibilities related to release of certain materials by commercial and industrial facilities into the sewer system. These facilities are aware of their regulatory requirements and enforcement by BES is a key element in protecting the sewer system. Enforcement is also a key element in maintaining regulatory permits imposed on the City of Portland for which BES has the compliance responsibility. In other words, having standard and consistent appeal fees is an important goal, but it may also be appropriate to have different fee categories. There could be a distinction between appeals to CHO fees for residential customers compared to commercial and industrial customers as well as a possible tiered approach to reflect differences in the size of

commercial and industrial customers. CUB does not advocate for a complicated tier structure, a residential tier and two commercial/industrial tiers seem sufficient.

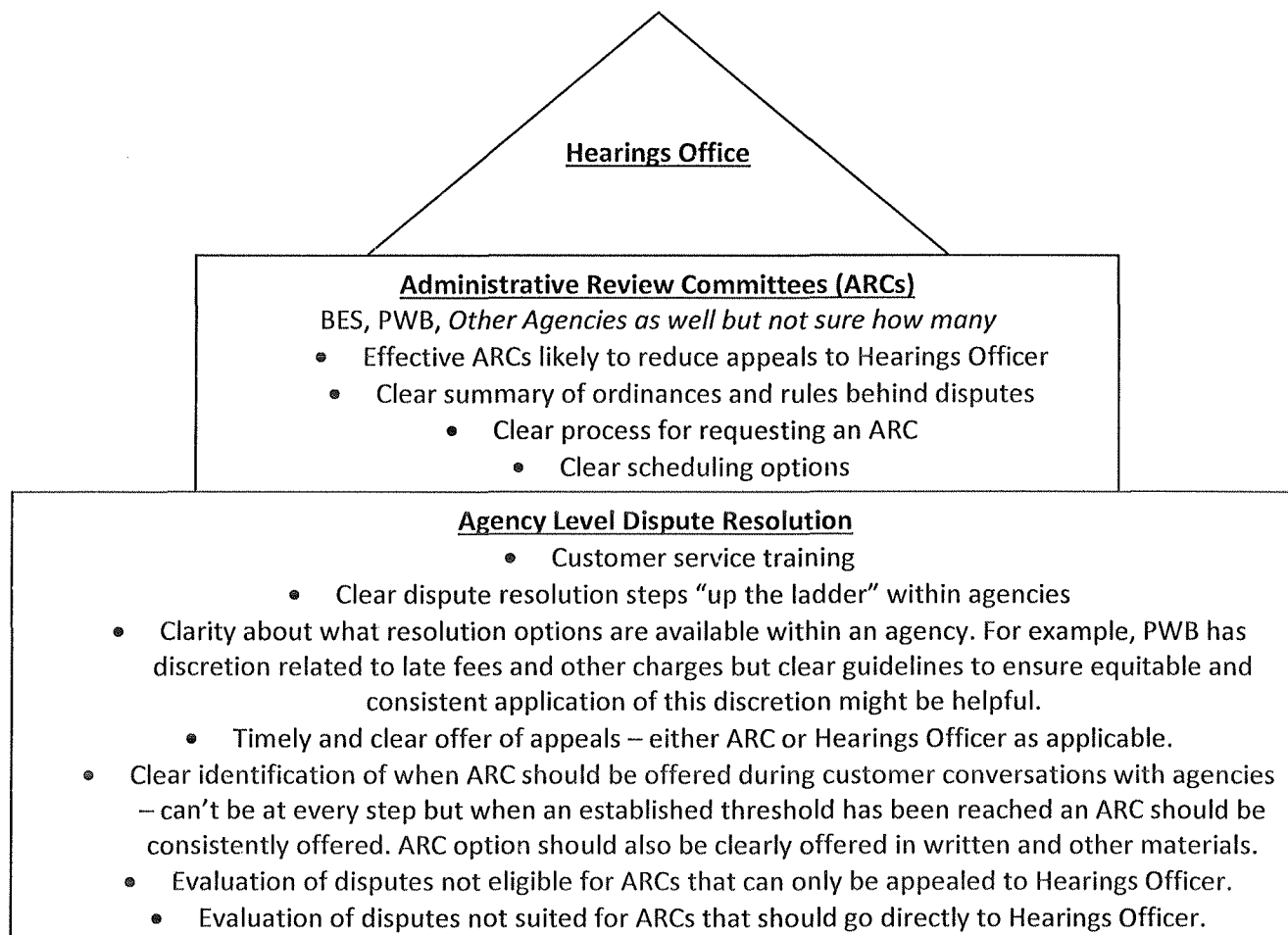
If some fees are higher, however, the level at which they are set should consider the typical fines assessed. For example, if a fine is typically \$250 and the appeals fee is \$1,000 the goal of an appeals process to provide an impartial review of the administrative decision is hindered.

A means testing approach does not seem appropriate and CUB does not see it as being the same as a tiered fee structure. Means testing would be setting fees based on ability to pay within whatever fee categories may be developed. Setting fees based on means testing is not appropriate because providing meaningful appeal options meets critically important governmental transparency and accountability goals in addition to providing an impartial review of administrative decisions,. Meeting these broader goals is hindered by setting appeal fees on the basis of ability to pay.

### Possible Next Steps

CUB also suggests a comprehensive review of the city's dispute procedures that could be informed by the dispute resolution pyramid outlined below. As important as equitable access to the Hearings Office is, it should be the last dispute resolution step. The goal should be to resolve disputes within each agency and the extent to which this is done reduces demand for CHO involvement or the intermediate Administrative Review Committee (ARC) step offered by some bureaus.

#### DISPUTE RESOLUTION PYRAMID



A starting point for dispute resolution at the agency level is setting a priority on customer service and related training. A citywide initiative on this topic, Bureau Innovation Project #7, was launched in 2006 following surveys and other assessments undertaken at the request of then-Mayor Tom Potter. A Customer Service Advisory Committee was established and numerous trainings and other steps were taken, particularly by bureaus with extensive interaction with the public.<sup>1</sup> These efforts do seem to have tapered off so some refresher steps may be prudent. A logical next step, though, could be a citywide effort to assess and identify improvements for dispute resolution.

In regard to the bottom or base of the pyramid, consistent coaching to city bureaus on dispute resolution to ensure that there are clear procedures on when to move disputes “up the ladder” within agencies seems prudent. Clear identification to the customer of when an ARC should be offered is needed while recognizing that such an offer isn’t appropriate at every internal dispute resolution step identified by an agency. This is why a clear set of steps is needed. When a dispute hits the “top of the ladder” is when a timely notice of an appeals process should be made to the customer. Providing notice of appeals should also be consistently offered in a bureau’s printed and online materials.

The middle tier of the dispute pyramid is offering some form of dispute resolution process that does not involve the CHO. It isn’t necessary for every bureau to follow the lead of BES and PWB and establish administrative review committees. But when this approach is taken it needs to be clear what disputes go to an ARC and if there are issues that should skip that step and proceed to the CHO. Conversely, evaluation of disputes for which using an existing ARC process is not allowed and instead even a first appeal has to be made to the CHO is also suggested. Citywide guidelines on these points seem appropriate.

CUB will be focusing on these issues related to utility bureaus but we suggest that a citywide review of dispute resolution procedures may be appropriate, perhaps by the City’s Administrative Officer with possible consultation from the Office of Neighborhood Involvement, Office of Equity and Opportunity, and the Ombudsman in the Auditor’s Office. Such a comprehensive assessment could be the basis for the development of citywide guidelines for the structure and operation of dispute resolution options and provide a forum for coaching and educational efforts shared among bureaus.

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<sup>1</sup> The range of customer service activities that resulted from the Bureau Innovation Project #7 is summarized on the website of the Office of Neighborhood Involvement, <https://www.portlandoregon.gov/oni/45352>

**NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER**



POST OFFICE BOX 40723  
PORTLAND, OREGON 97240-0723

DATE: April 10, 2015

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

FROM: Portland Chapter of the National Lawyers Guild

CC: Auditor Mary Hull Caballero [Mary.HullCaballero@portlandoregon.gov](mailto:Mary.HullCaballero@portlandoregon.gov)  
Ombudsman Margie Sollinger, [Margie.Sollinger@portlandoregon.gov](mailto:Margie.Sollinger@portlandoregon.gov)

RE: Support of Portland's Administrative Hearings Office Proposal

Dear Mayor Hales and City Council Members:

I am writing on behalf of the Portland National Lawyers Guild in support of the Portland City Auditor's efforts to eliminate barriers to accessing administrative appeal processes. We strongly encourage you to approve the Auditor's proposed City Code addition of Chapter 3.130 amendments to Chapter 22.10, and corresponding budget request. Establishing a minimum notice requirement and mandating a nominal fee cap and fee waiver for administrative appeals are essential to providing equal access to justice for Portland's residents.

Sincerely,

Kristen Chambers  
Portland Policy Board Member, National Lawyers Guild