

CHAPTER 20J
ADMINISTRATIVE RULE MAKING
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20J.010. Scope. The provisions of SRC Chapter 20J are intended to establish uniform procedures for the promulgation of administrative rules; the issuance of all enforcement orders; the issuance, denial, revocation or suspension of licenses and permits; and the conduct of contested cases, and shall be used

as the procedures for such actions, unless other procedures are specifically required by the Salem Revised Code, or state or federal law. (Ord No. 112-07)

20J.020. Definitions. Unless the context otherwise specifically requires, as used in this Chapter, the following mean:

(a) “Administrative rule” means any regulation that implements, defines or clarifies a general regulatory standard established in a provision of the Code, where the authority to adopt the regulation as an administrative rule is specifically delegated by ordinance to the City Manager or a department director. As used in this Chapter, “administrative rule” does not include other types of administrative regulations of the City, including, by way of illustration, but not of limitation, formal interpretations issued pursuant to SRC 110.050; rules promulgated or policies adopted by the City Council; rules of court adopted by the Municipal Judge; internal management directives, standards or regulations; department head letters; personnel policies; internal operating procedures; and construction standards for public improvements, including public facilities constructed pursuant to conditions of land use approval and improvements within the public right-of-way.

(b) “City Manager” means the City Manager of the City of Salem, or the City Manager’s designee.

(c) “Code” means the Salem Revised Code.

(d) “Contested case” means a proceeding before a Hearings Officer arising out of the imposition of a civil penalty; the abatement of a nuisance; the refusal to issue or renew, or the suspension or revocation, of any license or permit; or any other matter whereby compliance with the Code or a determination of a person’s rights and remedies under the Code has been conferred on the Hearings Officer. As used in this Chapter, contested case does not include the appeal of a land use decision, as defined by ORS 197.015(10) or limited land use decision, as defined by ORS 197.015(12), or any other decision where another appellate body is specifically designated by the Code, or by state or federal law.

(e) “Enforcement officer” means the department director or other employee of the City designated as having authority to issue enforcement orders, impose civil penalties, or grant, deny, suspend or revoke a license or permit, or that person’s designee.

(f) “Enforcement order” means a notice of noncompliance or violation; a notice to cease and desist; a notice to abate; a notice denying, suspending or revoking a license or permit; or any other similar notice denying, suspending or revoking any other right or privilege.

(g) “Hearings Officer” means the hearings officer appointed pursuant to SRC 2.035, or any other person designated and appointed by the City Council as a hearings officer for a particular proceeding or group of proceedings.

(h) “License” or “permit” means the whole or any part of any written form of permission that is required in order to pursue an activity, trade, occupation or profession. As used in this Chapter, “license” or “permit” does not include building permits, urban growth development permits, or any land use decision, as defined by ORS 197.015(10) or limited land use decision, as defined by ORS 197.015(12).

(i) “Person” means a natural person, partnership, corporation, limited liability partnership, limited liability company, co-operative, governmental entity, association, or other entity in law or fact. (Ord No. 112-07; Ord No. 42-09)

ADMINISTRATIVE RULEMAKING

20J.030. Administrative Rulemaking Authority. The City Manager or a department director shall exercise rulemaking authority conferred by the Code consistent with the procedures set forth in this Chapter. (Ord No. 112-07)

20J.040. Notice of Rulemaking.

(a) Prior to the adoption, amendment, or repeal of any administrative rule, the City Manager shall give notice of proposed rulemaking by:

- (1) Making copies of the notice of proposed rulemaking available to any person who has requested such notice by submitting a written request to receive such notice to the City Recorder;
- (2) By posting notice of proposed rulemaking on the City's website, not less than fifteen calendar days prior to the adoption of the rule;
- (3) Providing a copy of the notice of proposed rulemaking to the City Council;
- (4) Posting notice at two locations at City Hall; and
- (5) The City Manager may direct that notice of the rule be published in a newspaper of general circulation within the City, not less than fifteen calendar days prior to the adoption of the rule.

(b) The notice of proposed rulemaking shall:

- (1) State the subject matter and purpose of the proposed rule in sufficient detail to inform a person that the person's interests may be affected by the rule;
- (2) State the time, place, and manner for interested persons to submit data or written comments on the proposed rule;
- (3) Include a citation of the authority to promulgate the rule;
- (4) Include a statement of the need for the rule and a statement of how the rule is intended to meet that need; and
- (5) List the principal documents, reports, or studies, if any, prepared by or relied upon by the City in considering the need for and in preparing the rule, and identify the location where those documents are available for public inspection.

(c) Any person may request mailed copies of notices of proposed rulemaking pursuant to subsection (a) of this section. The request shall be in writing, and shall be submitted to the City Recorder. Upon receipt, the City Recorder shall acknowledge the request, establish a mailing list, and maintain a record of all mailings made to all persons submitting such requests. (Ord No. 112-07)

20J.050. Opportunity for Comment. Interested persons shall be given not less than fifteen calendar days to submit data or written comments on the proposed administrative rule. Data or comments received from interested persons shall be considered in adopting the administrative rule. (Ord No. 112-07)

20J.060. Temporary and Emergency Rules.

(a) **Temporary Rules.** Notwithstanding SRC 20J.030 and SRC 20J.040, temporary rules may be adopted without notice or opportunity to comment, if needed to implement the provisions of any new or amended ordinance upon the ordinance's effective date.

(b) **Emergency Rules.** Notwithstanding SRC 20J.030 and SRC 20J.040, a rule may be adopted, amended or suspended without prior notice or opportunity to comment, or upon abbreviated notice and opportunity to comment, if the City Manager adopts written findings that an emergency exists, and the failure to act promptly will result in prejudice to the public interest.

(c) **Effective Period.** Any rule adopted, amended, or suspended under subsections (a) and (b) of this section shall not be effective or suspended for a period of more than one hundred and eighty calendar days. The adoption of a rule under this section does not preclude the subsequent adoption of an identical permanent rule. (Ord No. 112-07)

20J.070. Basis and Validity for Rule; Publication of Rules.

(a) Unless otherwise required by law, the adoption, amendment, or repeal of a rule need not

be based upon or supported by an evidentiary record.

(b) Unless the City Manager specifies another date, all rules adopted in substantial compliance with the provisions of this Chapter and shall be valid and in effect from and after the date the rule is adopted.

(c) The City Recorder shall compile all adopted rules, which shall be supplemented and revised as necessary. A copy of the compilation shall be made available to the public and may be made available in electronic form. (Ord No. 112-07)

20J.080. Council Review of Administrative Rules. The City Council, upon its own motion, may review a proposed administrative rule. When reviewing a rule, the City Council shall determine whether the rule is within the scope of the provision of the Code authorizing the rule's adoption, and whether the rule is duplicative of, or conflicts with, another rule or other federal, state or local law or regulation, or is outside of the range of rulemaking authority. If the City Council finds a proposed rule is not within the scope of the provision, or is duplicative of or in conflict with another law or regulation, the rule shall be amended or revised, or new rulemaking proceedings may be initiated. If the City Council find a proposed rule is outside of the range of rulemaking authority, the City Council shall clarify the range of rulemaking authority, and shall direct the rule be revised to reflect such authority, or that the rulemaking proceeding be abandoned.

ENFORCEMENT PROCEEDINGS AND CIVIL PENALTIES

20J.090. Initiation of Enforcement Proceedings.

(a) Proceeding for enforcement of the Code, including abatement of nuisances and enforcement of land use regulations, shall be initiated by the issuance of an enforcement order.

(b) Prior to issuing an enforcement order, the enforcement officer shall pursue such attempts as are reasonable in light of the circumstances to secure voluntary correction of the violation. If the attempts to secure voluntary correction are unsuccessful, the enforcement officer may issue an enforcement order, which shall give not less than ten business days to correct the violation. (Ord No. 112-07)

(c) Notwithstanding subsection (b) of this section, the enforcement officer may issue an enforcement order without having made attempts to secure voluntary correction where the violation poses an imminent threat to public health, safety, or welfare; was knowing and intentional; or was a repeat of a similar violation. If an order is issued pursuant to this subsection, the order shall set forth a time certain within which correction of the violation must be completed, which may be as soon as is practicable under the circumstances.

(d) An enforcement order shall contain:

- (1) Reference to the particular Code provision that is alleged to have been violated;
- (2) A short and plain statement of the matters asserted or charged;
- (3) A statement of the action required to remedy the violation;
- (4) The date on which the enforcement order was issued and the date time by which the violation must be corrected;
- (5) If a civil penalty is authorized, a statement that a civil penalty may be, or has been, assessed, and the maximum amount of the penalty per day;
- (6) A statement of the right to appeal the enforcement order to the hearings officer;
- (7) A short and plain statement of the appeal procedure; and
- (8) A statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the enforcement order.

(e) Any enforcement order issued in substantial compliance with subsection (d) of this section shall be valid from and after the date the order is issued. (Ord No. 112-07)

20J.100. Delivery of Enforcement Order. The enforcement order shall be delivered to the person, or sent to the person by first class mail and by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any enforcement order served by mail shall be deemed received three business days after the date mailed, if to an address within the State of Oregon, and seven business days after the date mailed, if sent to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid. (Ord No. 112-07)

20J.110. Appeal from Enforcement Order.

(a) A person who has been issued an enforcement order may appeal the order by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within fifteen business days after the date notice is delivered to the person or the person is deemed to have been received by the person under SRC 20J.100.

(b) The notice of appeal shall contain:

(1) The name, address and telephone number of the appellant;

(2) A copy of the enforcement order;

(3) The basis for the appeal, stating with specificity why the enforcement order was issued in error, based on one or more of the following:

(A) The enforcement order was issued in violation of, or is inconsistent with, the Code;

(B) The enforcement order was issued in violation of, or is inconsistent with a rule; or

(C) The enforcement order is not supported by a factual basis; or

(D) The enforcement order is in violation of other applicable federal, state or local law.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the City Council. The appeal fee is not refundable unless the hearings officer finds the enforcement order was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

(d) The hearings officer's hearing upon the appeal shall be limited to the reasons the enforcement order is incorrect, as set forth in the notice of appeal. A notice of appeal that is untimely filed shall be dismissed by the hearings officer. Failure to file a notice of appeal shall be a waiver of all right to review of the enforcement order. (Ord No. 112-07)

20J.120. Effective Date; Finality. An enforcement order shall be effective upon issuance, and shall become final upon expiration of the time for filing a notice of appeal. If an appeal of the enforcement order is timely filed, the enforcement order shall become final upon issuance of the hearings officer's decision affirming the enforcement order. (Ord No. 112-07)

20J.130. Alternative Dispute Resolution.

(a) Unless otherwise precluded by law, a person who has filed a valid, timely notice of appeal and the enforcement officer may agree to use alternative methods of dispute resolution to resolve the issues arising out of an enforcement order. Alternative dispute resolution may include any collaborative method designed to encourage the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder, or settlement conferences, but does not include binding arbitration.

(b) Final disposition of any issue arising out of an enforcement order may, unless precluded by law, be made by stipulation, agreed settlement, or consent order, entered by the hearings officer. A stipulation, agreed settlement or consent order must be in writing and signed by

the appellant and the enforcement officer. By signing such an agreement, the parties waive the right to a contested case hearing and to judicial review. (Ord No. 112-07)

CIVIL PENALTIES

20J.140. Imposition of Civil Penalty.

(a) When a person has violated a provision of the Code that provides for the imposition of a civil penalty, the enforcement officer may impose a civil penalty as provided in this section.

(b) After the date and time set forth in the enforcement order to correct a violation that provides for a civil penalty has elapsed, the enforcement officer shall determine whether correction is complete. If correction is not complete, the enforcement officer may assess civil penalty and issue a notice of civil penalty.

(c) Notwithstanding subsection (b) of this section, the enforcement officer may assess a civil penalty as part of an enforcement order if the enforcement officer finds the violation was knowing or intentional, is a repeat of a similar violation, or that it is objectively impossible to correct the violation, and include a notice of such assessment in the enforcement order.

(d) The civil penalty imposed pursuant to this section shall be in addition to:

(1) Assessments or fees for any costs incurred by the City in remediation, cleanup or abatement of a nuisance; and

(2) Any fines, assessments, or other costs imposed in any other actions authorized by federal, state or local law. (Ord No. 112-07)

20J.150. Criteria for Imposition of Civil Penalty. The notice of civil penalty shall set forth the amount of the penalty, which, unless otherwise specifically provided in the Code, shall not exceed \$2,000.00 per day. The amount of the civil penalty shall be based on consideration of the following criteria:

(a) The gravity and magnitude of the violation;

(b) Whether the violation was the result of events or circumstances not reasonably within the person's control, or whether the violation was the result of the person's negligent, knowing or intentional acts;

(c) The person's cooperativeness in correcting the violation;

(d) Whether the person has taken all feasible steps, or adopted necessary or appropriate procedures, to prevent future violations; and

(e) Any prior violations of the same or related provisions of the Code. (Ord No. 112-07)

20J.160. Notice.

(a) Notice of civil penalty shall be personally delivered to the person, or sent to the person by first class mail and by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State of Oregon, and seven business days after the date mailed if to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid.

(b) A notice of civil penalty shall include:

(1) A statement of the amount of the penalty, and the reasons therefor, based upon the criteria set forth in SRC 20J.150;

(2) The date on which the enforcement order was issued and the date by which correction was to be made, or, if the penalty is imposed pursuant to SRC 20J.140(d), a short and plain statement of the basis for concluding that the violation was knowing, intentional, repeated, or objectively impossible to remedy;

(3) A statement of the party's right to appeal the civil penalty to the hearings officer;

- (4) A short and plain statement of the appeal procedure; and
- (5) A statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the imposition or amount of the civil penalty. (Ord No. 112-07)

20J.170. Effective Date; Finality. A notice of civil penalty shall be effective upon issuance, and shall become final upon expiration of the time for filing an appeal. If a notice of appeal is timely filed, the penalty shall become final upon issuance of the hearings officer's decision affirming the civil penalty. (Ord No. 112-07)

20J.180. Unpaid Civil Penalties to Become Liens. If a civil penalty remains unpaid thirty calendar days after such penalty becomes final, the civil penalty shall be entered in the City lien docket. The lien shall bear interest at the legal rate, which shall commence from the date of entry in the lien docket, and may be foreclosed as provided by law. (Ord No. 112-07)

20J.190. Appeal from Imposition of Civil Penalty.

(a) Any person who has been issued a notice of civil penalty may appeal the imposition or amount of the civil penalty to the hearings officer, by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within fifteen business days after the date notice is delivered to the person or the person is deemed to have been received by the person under SRC 20J.160.

(b) The notice of appeal shall contain:

- (1) The name and address of the appellant;
- (2) A copy of the notice of civil penalty being appealed; and
- (3) The basis for the appeal, stating with specificity:

(A) Why the imposition of the civil penalty is in error, based on one of the following:

- (i) If the civil penalty is issued pursuant to SRC 20J.140(b), the person had completed correction of the violation within the time stated in the enforcement order;
- (ii) If the civil penalty was issued pursuant to SRC 20J.140(c), that the violation was not knowing or intentional, or a repeat of a similar violation, or the person demonstrated that the violation was not objectively impossible to correct by correcting the violation.

(B) Why the amount of the civil penalty is not supported by a factual basis, based on the criteria set forth in SRC 20J.150.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the City Council. The appeal fee is non-refundable, unless the hearings officer finds that the issuance of the civil penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

(d) The hearings officer's hearing upon the appeal shall be limited to the reasons the imposition or amount of the civil penalty is incorrect, as set forth in the notice of appeal. A notice of appeal filed after the period provided for filing an appeal shall be dismissed by the hearings officer as untimely. Failure to appeal as provided in this section shall be a waiver of all right to review the imposition or amount of the civil penalty. (Ord No. 112-07)

LICENSES AND PERMITS

20J.200. New and Renewal License and Permit Applications.

(a) The applicant for a new license or permit, or for the renewal of an existing license or permit, shall establish the requirements for the license or permit, including, but not limited to eligibility, qualifications and fitness.

(b) Applicants for a new license or permit, or for the renewal of an existing license or permit, shall provide accurate information on the application. Fraud, intentional

misrepresentation or negligent misrepresentation is grounds for denial of a new license or permit, or the renewal of an existing license or permit.

(c) If any license or permit must be periodically renewed, and the licensee or permittee has made timely application therefor, such license or permit shall not be deemed to expire, notwithstanding any stated expiration date contained therein, until notice has been issued granting or denying the renewal. (Ord No. 112-07)

20J.210. Notice.

(a) A notice of denial of a new, or renewal of an existing, license or permit shall be personally delivered to the person, or mailed to the person by first class mail and by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State of Oregon, and seven business days after the date mailed if to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall be deemed to, and shall not, render the notice invalid.

(b) A notice of denial of a new, or renewal of an existing, license or permit shall include a short and plain statement of the reason for denial; a statement of the party's right to appeal the denial to the hearings officer; and a short and plain statement of the appeal procedure. (Ord No. 112-07)

20J.220. Appeals of Denials of New or Renewed Licenses or Permits.

(a) Any person who has been denied a new license or permit, or a renewal of an existing license or permit, may appeal the denial to the hearings officer, by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within fifteen business days after the date notice is delivered to the person or is deemed to have been received by the person under SRC 20J.210.

(b) The notice of appeal shall contain:

- (1) The name and address of the appellant;
- (2) A copy of the notice of denial being appealed; and
- (3) The basis for the appeal, stating with specificity the reason the denial of the issuance or renewal is incorrect.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the City Council. The appeal fee is non-refundable, unless the hearings officer finds the denial or failure to renew was not well grounded in law or fact, in which case the appeal fee shall be refunded in full.

(d) The hearings officer's review shall be limited to the reasons set forth in the appellant's notice of appeal as to why the denial of the issuance or renewal was incorrect. A notice of appeal filed after the period provided for filing an appeal shall be dismissed by the hearings officer as untimely. Failure to appeal as provided in this section shall be a waiver of all right to review the denial. (Ord No. 112-07)

20J.230. Emergency License or Permit Suspension or Revocation.

(a) **Summary Action.** If a serious danger to the public health, welfare or safety exists, the City Manager may issue an emergency order, suspending or revoking a license or permit. The emergency order shall take effect immediately upon issuance, or at such later time as may be specified in the emergency order. An emergency order may be issued without prior notice or prior hearing, provided that notice and hearing occur as soon as practicable after issuance of the order.

(b) **Notice.** A copy of the emergency order shall be personally served on the licensee or permittee, or mailed to the person by first class mail and by any one of the following:

certified or registered mail, return receipt requested, or express mail, addressed to the last known residence or business address of the party or parties. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State of Oregon, and seven business days after the date mailed if to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall not be deemed, and shall not, render the notice invalid.

(c) **Contents of Order.** The emergency order shall include the following:

- (1) The effective date of the emergency order;
- (2) The specific facts that are the basis for the emergency suspension or revocation;
- (3) The reasons the specified acts or omissions seriously endanger the public's health, welfare or safety, including a citation to any applicable sections of the Code;
- (4) A statement that the licensee or permittee has the right to demand a hearing to contest the emergency order, which will be held as soon as practicable; and
- (5) A statement that if the demand for hearing is not received by the City within fifteen business days of the date the emergency order is issued, the licensee or permittee shall have waived right to a hearing, and to otherwise contest the emergency suspension or revocation.

(d) If the licensee or permittee timely requests a hearing, the matter shall be referred to the hearings officer for a contested case hearing. The hearings officer shall, upon written request by the enforcement officer, combine the hearing on the emergency order with any underlying enforcement proceeding affecting the license or permit.

(e) At the contested case hearing, the hearings officer shall consider the facts and circumstances surrounding the emergency order including, but not limited to:

- (1) Whether the acts or omissions of the licensee or permittee pose a serious danger to the public's health, welfare or safety; and
- (2) Whether circumstances at the time of the hearing justify affirming, amending or revoking the emergency order.

(f) Following the hearing, the hearings officer shall issue a final order, affirming, amending, or revoking the emergency order. (Ord No. 112-07)

CONTESTED CASE PROCEDURES

20J.240. Adoption of Rules for Contested Case Proceedings. The hearings officer may adopt rules, procedures, and forms not inconsistent with this Chapter to govern the procedure and the conduct of contested case hearings. All rules shall be effective upon adoption by the hearings officer. All rules shall be filed with the City Recorder, and shall be made available to the public upon request. (Ord No. 112-07)

20J.250. Setting Hearings. Upon the filing of a notice of appeal, the hearings officer shall set a time, date, and place for the hearing. The date shall be not less than twenty business days nor more than sixty business days after the date the notice of appeal is filed. The hearings officer may postpone, continue, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown. (Ord No. 112-07)

20J.260. Notice of Hearing.

(a) The hearings officer shall send a notice of the hearing, together with a true copy of the notice of appeal, to all parties not less than twenty business days prior to the date set for hearing. The hearings officer may authorize a shorter period when it appears that the alleged violation poses an imminent hazard to public health, safety, or welfare. The notice of hearing shall specify the time, date, and place of the hearing.

(b) Notice may be given by any method or combination of methods which, under the

circumstances, is reasonably likely to apprise the parties of the hearing, including, but not limited to:

- (1) Personal service;
 - (2) By mailing a copy of the notice to the appellant and the enforcement officer by first class mail addressed to the residence or business address of the appellant as set forth in the notice of appeal, and to the enforcement officer at the enforcement officer's business address. The notice shall be deemed received three business days after the date mailed if to an address within the State of Oregon, and seven business days after the date mailed if to an address outside the State of Oregon; and
 - (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons.
- (c) Notice of the hearing shall also be provided to:
- (1) The tenants, residents, and lessees of any building or structure if the hearings officer's decision or order could result in the vacation, closure, or demolition of a building or structure;
 - (2) Any other person who has an interest in property, as reflected in the county deed records, that would be adversely affected by the hearings officer's decision or order;
 - (3) Any person who has requested such notification of the hearing, in writing. The hearings officer may provide by rule for the manner and means of giving notice to such persons in a manner reasonably calculated to provide such persons with actual notice of the hearing.
- (d) The failure of any person to receive actual notice of the hearing shall not invalidate any decision or order of the hearings officer. (Ord No. 112-07)

20J.270. Stay of Enforcement Order.

- (a) Unless otherwise provided by law, any person who timely files a notice of appeal may file a request to stay the enforcement order with the hearings officer.
- (b) The request to stay shall contain:
- (1) The name, address and telephone number of the person filing the request;
 - (2) A copy of the enforcement order;
 - (3) The name, address and telephone number of any other parties to the enforcement action;
 - (4) If the person is represented by an attorney, the name, address and telephone number of the attorney; and
 - (5) A statement of facts making a showing that:
 - (A) The person will suffer irreparable injury if the stay is not granted;
 - (B) There is a reasonable basis to claim that the enforcement order was issued in error; and
 - (C) Granting the stay will not result in substantial public harm.
- (c) The request must be delivered to the enforcement officer and any other party identified in the request, at the same time the request is filed with the hearings officer.
- (d) The hearings officer may conduct further proceedings pertaining to the request for stay, including taking further evidence. The enforcement officer may present additional evidence in response to the request for a stay.
- (e) The hearings officer shall issue an order granting or denying the request for stay within fifteen calendar days after receipt. The hearings officer shall:
- (1) Grant the stay upon finding of irreparable injury to the appellant and the existence of reasonable basis for claim the enforcement order was issued in error. The hearings officer may impose reasonable conditions upon the stay, including but not limited to, posting of a bond, irrevocable letter of credit or other undertaking;
 - (2) Deny the stay upon a finding that the appellant failed to show irreparable injury or

failed to show the existence of a reasonable basis for the claim of the enforcement order was issued in error; or

(3) Deny the stay upon a finding that substantial public harm would result from granting the stay, notwithstanding the appellant's showing of irreparable injury and showing of the existence of reasonable basis for the claim of the enforcement order was issued in error. (Ord No. 112-07)

20J.280. Informal Resolution.

(a) Unless precluded by law, informal disposition of any contested case may be made, with or without a hearing, by stipulation, consent order, or agreed settlement; provided, however, after issuance of a notice of hearing, no building occupied as a residential structure may be vacated based on an informal disposition, unless approved by the hearings officer.

(b) Any informal disposition of a contested case must be in writing and signed by the party or parties. The hearings officer shall incorporate that disposition into a final order. The hearings officer shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates an informal disposition is a final order in a contested case, but is not subject to judicial review. (Ord No. 112-07)

20J.290. Subpoenas.

(a) The hearings officer may issue subpoenas to any party upon a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, shall receive fees and mileage as provided for witnesses in actions in municipal court.

(b) If any person fails to comply with any subpoena or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the Salem Municipal Court or the circuit court of any county of the State of Oregon, on the application of the hearings officer, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Ord No. 112-07)

20J.300. Discovery.

(a) **Production of Documents and Things.** Upon written request by the appellant or the enforcement officer, and a showing of the general relevance, the hearings officer shall enter an order directing the other party to provide a list of witnesses, grant permission to enter upon land to inspect the land or other property, and any books, papers, documents, photographs or tangible objects which the party intends to offer into evidence at hearing. Before requesting a discovery order, the party must seek discovery through an informal exchange of information.

(1) All discovery requests shall be made not less than fifteen business days prior to the hearing. All discovery shall be provided not less than eight business days prior to hearing.

(2) Failure to provide requested discovery shall prevent the introduction of such evidence, unless the party can demonstrate good cause why the discovery was not provided.

(3) The hearings officer's order may require the party requesting discovery to pay the reasonable costs associated with producing the discovery.

(4) Nothing in this subsection shall require the production of any documents subject to any privilege recognized under the Oregon Evidence Code, including, but not limited to, documents subject to attorney-client privilege, or require the production of a document that is exempt from disclosure under Oregon Public Records Law.

(b) Depositions. On petition of any party, the hearings officer may order the testimony of any material witness and may be taken by deposition in the manner prescribed by law for depositions in civil actions or by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides within the State of Oregon and is unwilling to appear, the hearings officer may issue a subpoena to require the person's appearance at the deposition. Unless expressly provided by law or expressly agreed upon by the enforcement officer, a hearings officer may not authorize a party to take depositions that are to be paid for by the City. The cost of a deposition shall be borne by the party seeking to take the deposition. (Ord No. 112-07)

20J.310. Late Filing of Documents. Unless otherwise provided by law, when a party or enforcement authority fails to file any document in a contested case proceeding, other than a request for hearing, within the time specified, the late filing may be accepted if the hearings officer, upon written explanation of the reason for the late filing, determines that there was good cause for failure to file the document within the required time. (Ord No. 112-07)

20J.320. Prehearing Notice.

(a) Prior to the commencement of a contested hearing, the hearings officer shall inform each party, either orally or in writing, of the following:

- (1)** A general description of the hearing procedure;
- (2)** That a record will be made of the proceedings, the manner of making the record, and its availability to the parties;
- (3)** The function of the record with respect to any appeal;
- (4)** That the City may be represented by an attorney;
- (5)** That the hearings officer will preside over the hearing, and will make a final decision, and that the hearings officer has the authority to make a final independent determination on the merits;
- (6)** That a party may, during the course of the proceedings, request a recess if the party determines representation by an attorney is necessary for the protection of the party's rights; and
- (7)** A description of the process for judicial review of the hearings officer's decision.

(b) The failure to give notice of any item specified in subsection (a) of this section, shall not invalidate any order of the hearings officer, unless upon judicial review, a court finds that the failure prejudiced the substantial rights of the party. In the event of such a finding, the court shall remand the matter to the hearings officer, who shall reopen the hearing and take whatever steps are necessary to remedy any prejudice to the rights of the party. (Ord No. 112-07)

20J.330. Hearings Procedure.

(a) The hearing shall be conducted, subject to the discretion of the hearings officer, as follows:

- (1)** Opening statements of the parties or the parties' legal counsel;
- (2)** The evidence of the party with the initial burden of proof in support of its action, as set forth in SRC 20J.340(e);
- (3)** The evidence of the other parties;
- (4)** Any rebuttal evidence; and
- (5)** Any closing arguments.

- (b) The hearings officer, the enforcement officer, the appellant, and legal counsel for the parties may question witnesses.
- (c) Parties may be represented by counsel, who may respond to and present evidence and argument on all issues involved in the hearing.
- (d) Exhibits shall be marked, numbered, and maintained by the hearings officer as part of the record of the proceedings.
- (e) The hearings officer may request that any closing arguments be submitted in writing or be made orally. (Ord No. 112-07)

20J.340. Rules of Evidence. The following rules of evidence shall apply in contested case proceedings:

- (a) **Oregon Evidence Code Inapplicable.** Except as otherwise specifically provided herein, the technical rules relating to evidence and witnesses set forth in the Oregon Evidence Code shall not apply in contested case proceedings.
- (b) **Witnesses and Evidence.** Each party shall have the right to:
 - (1) Call and examine witnesses on any matter relevant to the issues of the hearing;
 - (2) Introduce documentary and physical evidence;
 - (3) Cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - (4) Present rebuttal evidence; and
 - (5) Be represented by anyone who is lawfully permitted to do so.
- (c) **Admissibility of Evidence.** Any relevant evidence may be received which is of the type that a reasonably prudent person would rely on in the conduct of their serious affairs. Relevant evidence means evidence having any tendency to make the existence or non-existence of any fact that is of consequence to the appeal more probable or less probable than it would be without the evidence.
- (d) **Testimony on Oath or Affirmation.** Testimony shall be taken upon oath or affirmation, which may be administered by the hearings officer.
- (e) **Burden of Proof.** The burden of proof shall be by a preponderance of the evidence, and the initial burden of proof shall be as follows:
 - (1) In an appeal from the issuance of an enforcement order, the City shall have the burden of proving the reasons why the enforcement order was properly issued.
 - (2) In an appeal from the imposition or the amount of a civil penalty, the City shall have the burden of proving the imposition, or the amount, of the civil penalty was correct.
 - (3) In an appeal from the denial of a issuance or renewal of a license or permit, the applicant for the license or permit shall have the burden of proving entitlement to the license or permit, or renewal thereof.
 - (4) In an appeal from the revocation or suspension of a license or permit, the City shall have the burden of proving that the revocation or suspension was proper.
- (f) **Burden of Production.** The burden of presenting evidence to support a fact or proposition rest with the proponent of the fact or proposition.
- (g) **Exclusion of Evidence.** Irrelevant or unduly repetitious evidence may be excluded.
- (h) **Privileges.** Privileges afforded by Oregon law shall be recognized by the hearings officer.
- (i) **Objections.** Evidence objected to may be received by the hearings officer. If the hearings officer does not rule on its admissibility at the hearing, the hearings officer shall do so either on the record before a final order is issued or in the final order. The hearings officer shall accept an offer of proof made for excluded evidence, which shall contain sufficient detail to allow the reviewing court to determine whether the evidence was properly excluded. The hearings officer may direct that the offer be oral or written and at what stage

in the proceeding it can be made, and may place reasonable limits on the offer of proof, including time devoted to an oral offer or number of pages in a written offer.

(j) Ex Parte Communications.

(1) An ex parte communication is an oral or written communication outside of the contested case proceeding, and without the knowledge or consent of other parties or the parties' legal counsel, made directly or indirectly to the hearings officer that relates to a legal or factual issue in the pending contested case proceeding. Ex parte communications to the hearings officer are prohibited.

(2) If an ex parte oral or written communication occurs with the hearings officer, the hearings officer shall disclose the existence and substance of the ex parte contact on the record, and shall not consider the substance of the ex parte contact as part of the hearing officer's decision making process.

(k) Official Notice.

(1) Official notice may be taken, either before or after the submission of a case for decision, of official records, statutes, administrative rules and regulations and ordinances.

(2) Official notice may be taken of general, technical or scientific facts within the knowledge of the hearings officer, provided the parties are informed of the hearings officer's intent to take official notice, and the parties are given the opportunity to present rebuttal evidence. If rebuttal evidence is presented, the hearings officer shall rule in the final order on whether the facts are to be considered evidence in the proceeding.

(l) Inspection of Premises. The hearings officer may inspect any building or premises involved in the proceeding, provided that notice of the inspection is given to the parties prior to the time the inspection is made, all parties have an opportunity to be present at the inspection, and material facts observed and conclusions drawn from such observation are stated for the record at the time of the completion of the inspection. (Ord No. 112-07)

20J.350. Transmittal of Questions to the Enforcement Officer. The hearings officer may submit questions regarding the enforcement officer's interpretation of the applicable provisions of the Code transmitted, in writing, to the enforcement officer. The submission shall include a summary of the matter in which the question arises and shall be served on the enforcement officer and the appellant in any manner allowed by SRC 20J.260(b). (Ord No. 112-07)

20J.360. Exclusion of Witnesses; Removal of Disruptive Individuals. The hearings officer may exclude witnesses from the hearing, except for a party, a party's authorized representative, and the enforcement officer. A hearings officer may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing. (Ord No. 112-07)

20J.370. Record.

(a) The record in a contested case shall include:

- (1) All pleadings and intermediate rulings;
- (2) Evidence and testimony received;
- (3) Stipulations of the parties;
- (4) A statement of matters officially noticed;
- (5) Questions and offers of proof, objections and rulings thereon;
- (6) Proposed findings and exceptions; and
- (7) Any proposed order, and the final order prepared by the hearings officer.

(b) A tape recording or other electronic recording shall be made of all testimony. The recording need not be transcribed unless requested for purposes of rehearing or judicial

review. The party requesting transcription shall be charged the cost of transcription. (Ord No. 112-07)

20J.380. Final Order.

- (a) The hearings officer shall issue a final order within forty-five business days of the close of the hearing. Every final order shall be in writing.
- (b) Unless otherwise stipulated by the parties, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue and as to each ultimate fact required to support the final order. The findings of fact and conclusions of law may be orally stated on the record by the hearings officer and those findings and conclusions incorporated in the written order by reference.
- (c) The hearings officer shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the final order and any accompanying findings and conclusions by first class mail to each party, or, if applicable, to the party's attorney of record.
- (d) Every final order shall include a citation to the statute or statutes under which the order may be subject to judicial review. (Ord No. 112-07)

20J.390. Default; Requests to Set Aside Default.

- (a) The hearings officer shall issue a final order by default when a party fails to appear at the time and place set for the hearing. The hearings officer may issue a final order by default only upon a prima facie case made by the enforcement officer on the record. The hearings officer shall notify the party in default of the entry of a final order by default by delivering or mailing a copy of the order by first class mail to the party and, if applicable, to the party's attorney of record.
- (b) The hearings officer may grant a request to set aside an order of default, if such request is filed with the hearings officer no later than sixty days after the entry of the final order of default, and the party demonstrates by clear and convincing evidence that the cause for failure to appear at the hearing was beyond the party's reasonable control. In determining whether to grant a request to set aside a default under this subsection, the hearings officer may such further inquiry into the reasons for the party's failure to appear as the hearings officer deems appropriate.
- (c) If the request to set aside the default is granted, the hearings officer shall enter an order granting the request and set the matter for hearing. If the request is denied, the hearings officer shall enter an order setting forth reasons for the denial. (Ord No. 112-07)

20J.400. Reconsideration or Rehearing.

- (a) A party may file a petition for reconsideration or rehearing within thirty calendar days after the final order was mailed. A copy of the petition shall also be personally delivered or mailed by first class mail to all parties to the proceeding. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied.
- (b) The petition shall set forth the specific grounds for reconsideration, and may be supported by a written argument. If the petitioner establishes good and sufficient reason for reconsideration, the hearings officer shall issue an order for rehearing.
- (c) If the hearings officer determines there are good and sufficient reasons for rehearing, the hearings officer shall decide the scope of the rehearing. The hearings officer may limit the scope of the rehearing to specific issues and may issue a new or amended final order, or reaffirm the original final order.
- (d) The hearings officer at any time and upon a showing of due diligence, may set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing,

when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order. (Ord No. 112-07)

20J.410. Remedies.

(a) On review, the hearings officer may affirm, modify, reverse or vacate the decision or determination appealed from or remand the decision or determination to the enforcement officer for such reconsideration, additional consideration, or further action as the hearings officer may direct. The hearings officer may issue an order an appellant found in violation of any applicable provision of the Code to comply with the applicable provision, within such time as the hearings officer may by order allow. By way of illustration, but not limitation, the order may require such party to do any or all of the following:

- (1) Make all necessary repairs, modifications, and/or improvements to any structure, real property, or equipment involved;
- (2) Abate or remove any nuisance;
- (3) Change the use of the building, structure, or real property involved;
- (4) Install any equipment necessary to achieve compliance;
- (5) Order a building or structure vacated or demolished, when it reasonably appears that such measures are required to protect public health, safety, or welfare and direct that the property owner undertake any and all interim measures, as may be necessary to protect public health, safety and welfare. If a residential structure is ordered vacated pursuant to SRC Chapter 50 or SRC Chapter 56, and the City relocates the tenants of such property, then the cost incurred by the City for relocating the tenants as provided by ORS 90.450 shall be an assessment lien upon the property from which the tenants are relocated;
- (6) Pay a civil penalty of up to \$2,000 per day that the violation continues;
- (7) Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

(b) Assessments.

- (1) A notice and statement of costs incurred by the City and civil penalties assessed under this section to the person, shall be personally delivered to the person by the enforcement officer, or mailed by the enforcement officer to the person by first class mail and by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any notice and statement served by mail shall be deemed received three calendar days after the date mailed if to an address within the State of Oregon, and seven calendar days after the date mailed if to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid.
- (2) The notice and statement of costs shall contain:
 - (A) An itemized statement of costs incurred by the City;
 - (B) If a civil penalty was assessed, a statement the amount of the penalty per day;
 - (C) A statement of the right to file objections to the amount of costs with the hearings officer; and
 - (D) A statement that if no objections are filed to the notice and statement of costs within the time allowed, the person will have waived the right to review of the notice and statement of costs.
- (3) The enforcement officer shall file a copy of notice and statement of costs with the hearings officer along with a copy of proof of service upon the person. If no objection to such statement is filed by the person with the hearings officer within fifteen calendar days from the date of service or mailing, the hearings officer shall

certify such statement and forward the same to the Finance Director who shall forthwith enter the same as an abatement lien in the City lien docket.

(A) If an objection to the statement is received within the fifteen-day period, the hearings officer shall schedule and hold a hearing on the objection. The hearing shall be limited to whether the costs incurred by the City were correct, proper and reasonable, or whether the civil penalty was correctly calculated.

(B) After the hearing, the hearings officer shall certify the costs, or such part of the costs as the hearings officer determines were correct, proper and reasonable, and forward it to the Finance Director who shall enter it into the City lien docket. The hearings officer shall certify to the Finance Director the correct amount of any civil penalty imposed, and the Finance Director shall enter the civil penalty into the City lien docket.

(C) Liens imposed pursuant to this section may be collected or foreclosed as provided by law.

(D) In addition to the lien imposed under this section, any person found to be in violation of the Code shall be personally liable for costs incurred by the City pursuant to subsection (a) of this section, and for any civil penalty imposed by the hearings officer. In cases of a person found to be in violation of the Code as owners of property, the persons shall be personally liable hereunder only if they have control of the property, the legal authority to correct the violation, and knowingly or recklessly committed the violation. (Ord No. 112-07)

20J.420. Appeal of Hearings Officer's Decision or Order. Appeal of a final decision or order of the hearings officer shall be by writ of review to the Circuit Court of Marion County, Oregon, as provided in ORS 34.010-34.100, and not otherwise. (Ord No. 112-07)

20J.430. Enforcement. The City may institute appropriate suit or legal action in any court of competent jurisdiction to enforce the provisions of any decision or order of the hearings officer. (Ord No. 112-07)

