

**RULES OF PROCEDURE FOR THE  
CLACKAMAS COUNTY COMPLIANCE HEARINGS OFFICER AND DANGEROUS  
BUILDINGS APPEALS ADJUDICATOR**

(Published November 3, 2005)

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**1. Generally**

**1.1 Title.** This document is titled the Rules of Procedure for the Clackamas County Compliance Hearings Officer (the “CHO”) and may be referred to as “CHO Rules.”

**1.2 Purpose.** The purpose of the CHO Rules is to supplement the provisions of Clackamas County Code (“CCC”) Chapter 2.07 and CCC Section 9.01.190 for matters within the jurisdiction of the CHO.

**1.3 Applicability.** The CHO Rules shall apply to all matters within the jurisdiction of the CHO as provided in CCC 2.07.020 and CCC 9.01.190 and to administrative practice and procedure before the CHO.

**1.4 Authority.** The CHO is authorized to promulgate these rules pursuant to CCC 2.07.070.M.

**1.5 Conflicts of law.** To the extent that these rules are inconsistent or conflict with the provisions of CCC Chapter 2.07 or other provisions of the Code or any Ordinance adopted by the Clackamas County Board of Commissioners or state law, the provisions of CCC Chapter 2.07 or other adopted Code, Ordinance or state law shall control.

**1.6 Construction and interpretation.**

- A. When the CHO Rules are not clear, the CHO shall construe and interpret them based on the plain meaning of the words used and their context.
- B. Before the close of the public record in a given case, a party may petition the CHO to interpret the CHO Rules as they apply to that case. Such a petition shall be in writing and shall clearly identify the CHO Rule(s) for which an interpretation is sought, the manner in which the petitioner believes the CHO Rules should be interpreted, and the reason(s) why the CHO should interpret the rules as requested.
- C. When a question of practice or procedure arises that is not specifically addressed by the CHO Rules, the CHO shall determine the practice or procedure that he or she deems most appropriate, in which case the CHO shall identify that practice or procedure and explain in a written order why it is consistent with concepts of fundamental fairness and procedural due process.

2. **Definitions.** The following definitions shall apply unless the CHO concludes that the context or subject matter warrants otherwise:

- 2.1 **“Compliance Hearings Officer” or “CHO”** shall mean the Clackamas County Compliance Hearings Officer appointed by the Board of Commissioners pursuant to CCC 2.07.010 and the Dangerous Buildings Appeals Adjudicator appointed by the Board of Commissioners pursuant to CCC Title 9.
- 2.2 **“County Code” or “CCC”** shall mean the Clackamas County Code.
- 2.3 **“Department”** shall mean the Clackamas County Department of Transportation and Development.
- 2.4 **“Director”** shall mean the Director of the Clackamas County Department of Transportation and Development or his or her designee.

**2.5** “**Ex parte communication**” shall mean a written or oral communication to the CHO and/or observations or personal knowledge of the CHO relevant to the substance of a matter pending before the CHO outside of the public record in that matter.

**2.6** “**Party**” shall mean a person who is involved in proceedings before the CHO or who is entitled to be so involved. “Party” shall include but not be limited to the following:

- A. The Department and its employees who participate in a matter pending before the CHO by: (a) submitting a complaint, a request for a subpoena, a complaint or any other document on behalf of the Department, or (b) offering testimony or evidence in written or oral form, or (c) otherwise participating on the public record;
- B. The Respondent named by the Department in a complaint, a person or entity to whom the CHO issues a subpoena, or a person or entity to whom the Department or CHO provides written notice in a matter pending before the CHO;
- C. When the resolution of a complaint regarding property will or might include vacation or demolition of such property, the tenants, residents and lessees of occupied residential, commercial, industrial or institutional property;
- D. A person who testifies orally or in writing before the CHO while the public record is open, or who makes a request for party status in writing to the Department or CHO while the public record is open; and
- E. A person who files a complaint with the Department regarding the subject of a matter within the jurisdiction of the CHO unless that person requests confidentiality, and unless that person fails to give the Department his or her mailing address.
- F. When a party consists of more than one individual, or is a group, organization, corporation or other entity, the party shall designate

an individual to be its representative for CHO purposes and shall inform the CHO of the name, mailing address and telephone number of the designated representative. In such cases, the rights of the party shall be considered fully exercised by the designated representative, and contact or attempted contact with the designated representative is considered contact or attempted contact with the party.

**2.7 “Person”** shall mean an individual, partnership, corporation, association or public or private organization of any character.

**3. Disqualification of the CHO**

**3.1 Bias.** The CHO shall not participate in any matter in which the CHO has prejudged the issue such that the CHO cannot render an impartial decision based on the substantial evidence in the whole record.

**3.2 Conflicts of interest.** The CHO shall not participate in any of the following matters:

- A. Where the CHO has a financial, business and/or personal interest other than the interest in performing his duties as CHO or land use hearings officer;
- B. Where the CHO is related to a party by marriage, blood or legally-recognized status; or
- C. Where the CHO served as legal counsel to a party in the past. Service to the County as CHO, land use hearings officer or land use consultant shall not be considered service as legal counsel to a party.

**3.3 Ex parte contacts.**

- A. No person shall communicate ex parte directly or indirectly with the CHO concerning the merits or facts of any matter within the jurisdiction of the CHO. This rule does not prohibit ex parte contacts about procedural and scheduling matters, nor does it apply

to written submissions made before the record is closed and available to all parties.

- B. At the start of any hearing regarding a matter within his or her jurisdiction, the CHO shall disclose any ex parte contact he or she has had regarding the matter in question and shall recite or summarize the substance of such contact. The CHO shall invite and respond to questions by any party regarding such contact and shall allow any party to rebut the substance of that contact on the public record.
- C. The CHO may visit the site of an alleged violation; provided, he or she provides prior notice to all parties, obtains consent from the property owner, summarizes the substance of the site visit on the public record, and allows parties a timely opportunity to question the CHO about the site visit and to rebut the substance of the CHO's observations. No party shall accompany the CHO on such a visit except to the minimum extent necessary to obtain access to the property and/or to identify the alleged violation.

### **3.4 Motion to disqualify the CHO.**

- A. At any time prior to the close of the public record, a party may file a motion requesting the CHO recuse himself or herself from the matter based on a claim of bias, conflict of interest or undisclosed ex parte contact. Such a motion may be made in writing, or verbally on the record at a public hearing. The CHO may announce a decision on the motion orally on the public record. The CHO shall issue a written decision in response to such a motion, which decision may be part of the decision on the merits of the matter.
- B. The fact that the CHO has considered the same or a similar matter in another hearing, has made a ruling adverse to the interests of a party in the present or another hearing, or has considered and ruled

on the same or similar issue(s) in the same or a similar context shall not be a sole basis for disqualification.

**4. Filing, Service and Availability of Documents**

**4.1 Generally.** Except as otherwise provided herein or in the Clackamas County Code, all written materials in a matter within the jurisdiction of the CHO shall be filed with the Code Compliance Section of the Department of Transportation and Development. Materials may be delivered personally or by messenger, transmitted by facsimile or sent by surface mail or e-mail. Materials submitted at a hearing over which the CHO presides shall be considered to be filed consistent with this rule. Written material shall include electronic mail.

**4.2 Materials provided directly to the CHO.** The following materials shall be provided directly to the CHO and copies shall be provided to all parties to the matter:

- A. A written request for the CHO to postpone a hearing;
- B. A written request for the CHO to issue a subpoena to compel a witness to attend a hearing or to provide public documents;
- C. A written request for the CHO to hold the hearing by telephone or to decide the matter based exclusively on the written submissions of the parties; and
- D. A written objection to the form of a decision.

**4.3 Transmission of materials by the CHO.** As quickly as practicable after receipt of any materials submitted pursuant to CHO Rule 4.02, the CHO shall transmit to the Department an original or true and accurate copy of such materials as provided in CHO Rule 4.01.

**4.4 Availability of the official file.** The Department shall maintain all materials in its possession relating to each case in an official file. The official file shall be stored and accessed pursuant to Oregon Public Records law; ORS Chapter 192.

**5. Initiating an action before the CHO**

- 5.1 Initiation Generally.** Actions before the CHO shall be initiated as provided in Chapter 2.07 of the Clackamas County Code. In addition to the information required by the Code to be provided, the Department may provide any additional information that may be helpful to the respondent or the CHO.
- 5.2 Amending a complaint.** At any time prior to the date set for a hearing, the Department may file an amended complaint with the CHO, so long as copies are sent to the Respondent(s) and all other parties contemporaneous with the filing. The Department may amend the complaint on or after the date set for a hearing only if authorized by the CHO or with the consent of all parties. The CHO shall allow the parties a reasonable opportunity to respond to the merits of such an amended complaint

**6. Notices**

- 6.1 Notice of a hearing to a Respondent.** Notice of a hearing shall be provided at least fifteen (15) days prior to the scheduled hearing by either the CHO or the Department pursuant to Chapter 2.07 of the Clackamas County Code.
- 6.2 Notice of a postponed hearing.** If the CHO postpones a hearing after mailing notice of the hearing but before convening the hearing, the CHO or the Department shall personally deliver or mail to the parties a notice of the postponement as well as the location, date, and time to which the hearing is rescheduled.
- 6.3 Notice of a continued hearing.** If, after convening a hearing, the CHO verbally continues a hearing to a specific date and time certain, the CHO is not required to also provide written notice of that continued hearing.
- 6.4 Notice of a continuing or final order.** On the date that the CHO issues a continuing or final order, the CHO shall place copies of it in the US Mail, postage prepaid to Respondent(s), the Department, and any other party of record who requests it.

**7. Scheduling, postponements, continuances and open records**

**7.1 Scheduling hearings.**

- A. Within seven (7) calendar days after receiving a request for a hearing, the CHO or the Department shall schedule a hearing. Such a hearing shall be scheduled not less than fifteen (15) calendar days after the receipt of the request for a hearing. The CHO may communicate directly with County officials, the Respondent(s) and/or other parties to coordinate the scheduling of a hearing, postponement or continuance.
- B. If inclement weather, road closures or other exigencies warrant it, and following consultation with Department staff, the CHO may delay or cancel a hearing time or agenda, in which case the CHO and the Department shall take reasonable steps to inform all parties expected to appear that the hearing has been cancelled. The CHO shall thereafter give notice of a re-scheduled hearing as though the rescheduled hearing was the initial evidentiary hearing.

**7.2 Postponements.** The CHO may postpone a hearing for which notice has been given, provided that:

- A. The CHO receives a written request for the postponement at least seven (7) calendar days before the scheduled hearing date;
- B. The written request includes good reasons why such a postponement should be granted, or confirms that all parties consent to the postponement;
- C. The postponement would not unduly prejudice any party; and
- D. The postponement would not subject the public to an imminent threat of harm to people or property; provided further, the CHO may grant a postponement subject to terms and conditions that are intended to prevent such harm.

**7.3 Continuances.** A CHO has the inherent discretion to continue a hearing that he or she has convened, In evaluating the propriety of a continuance, the CHO shall consider the following:

- A. Whether the continuance is reasonably likely to result in additional relevant testimony and/or evidence about relevant facts and law; and
- B. Whether the continuance will unduly prejudice the parties; and
- C. Whether the continuance will subject the public to an imminent threat of harm to people or property that cannot be prevented or minimized through the imposition of terms and conditions on the continuance.

**7.4 Open records.** A CHO has inherent discretion to hold open the public record following a hearing to receive additional written information about relevant facts or laws, to allow parties to respond in writing to new evidence or arguments offered at the hearing or during the open record period, or for any other good reason. Whenever this occurs, the CHO shall allow all other parties a reasonable opportunity to respond to the new evidence or argument before closing the public record.

**8. Pre-hearing procedures**

**8.1 Subpoenas.** The CHO shall issue a subpoena requiring a person to appear and testify at the request of a party, under the following circumstances:

- A. If a hearing has been scheduled, the CHO must receive a written request for a subpoena at least fourteen (14) calendar days prior to the date set for the hearing unless all parties consent that a later request should be granted;
- B. The request must clearly identify the precise individual(s) subpoenaed as well as any documentary evidence that is sought from the witness. The request must also contain sufficient information to allow the CHO to determine that the subpoena is likely to produce relevant evidence; and

- C. The written request must be accompanied by applicable fees and mileage charges as provided by State law for witnesses in civil actions.
- D. If the CHO determines that the requested subpoena is not likely to lead to the production of relevant evidence at a hearing, the CHO should deny the issuance of the subpoena.
- E. Failure of a non-party to honor a subpoena shall not be grounds for the dismissal of a proceeding and the party requesting the subpoena shall be solely responsible for taking steps to enforce the subpoena in Circuit Court pursuant to Chapter 2.07 of the Clackamas County Code.

**9. Conduct of hearings**

**9.1 Generally.** Although generally informal in nature, hearings shall have a structured format and shall be conducted in a manner that the CHO finds will make the relevant evidence and testimony most readily and efficiently available to the CHO and will provide the parties with a fair and meaningful opportunity to be heard.

- A. The CHO may impose reasonable limits on the nature and length of testimony, provided the limitations do not unduly prejudice the rights of any party.
- B. The CHO shall exclude or limit evidence and testimony that is not relevant or is unduly repetitious.
- C. A CHO has inherent discretion to order that a hearing be recessed for any purpose and for any length of time so long as doing so would not prejudice the rights of any party

**9.2 Oaths and affirmations.** Before a witness testifies, the CHO shall administer an oath or affirmation to the witness.

**9.3 Order of presentation.** The CHO has discretion to conduct hearings in every case as the CHO sees fit so that every party has a full opportunity to be heard and to contest the evidence presented against them. When

conducting a hearing the CHO should strive to achieve both fairness and efficiency.

- A. The CHO will summarize the hearing process, the matter at issue, the rights and duties of the parties, and any ex parte communications relevant to the case;
- B. Staff of the Department will summarize the relevant facts and law and the Department's recommendation, after which other parties may cross-examine each Department witness;
- C. The Respondent will present arguments and evidence, after which other parties may cross-examine the Respondent and each of his or her representatives and witnesses;
- D. Other parties will present arguments and evidence, after which the non-presenting parties may cross-examine each of the presenting party's witnesses;
- E. Department staff will present arguments and new evidence in response to the witnesses on behalf of the Respondent and other parties; provided, if the Department offers new evidence, Respondent and other parties may cross-examine the Department witnesses regarding that new evidence;
- F. The Respondent will present arguments and new evidence in response to the Department witnesses and any other witnesses who testified against the Respondent; provided, if the Respondent offers new evidence, the Department and other parties may cross-examine the Respondent's witnesses regarding that new evidence;
- G. Other parties will present arguments and evidence in response to the Department witnesses and Respondent's witnesses, the Department and Respondent may cross-examine the witnesses regarding that new evidence;
- H. Respondent will make a closing argument, which shall not include new evidence.

I. The CHO will, when appropriate, issue orders continuing the hearing or holding open the record, and will deliberate and decide the matter.

**9.4 Hearing record and transcripts.** The CHO shall ensure an audio recording of all hearings is made and can be provided to the parties upon request. A written transcript of the hearing will not be made by the CHO. If any party wishes to create a written transcript, that party may do so at their own time and expense.

**9.5 Standard of conduct.** Parties, witnesses and observers shall conduct themselves with civility and shall deal courteously with anyone who attends a hearing. Failure to do so may result in removal from the hearing at the discretion of the CHO.

**9.6 Failure to appear.** If a party fails to appear at a hearing after notice has been given to that party as provided by law, the CHO may proceed to hold the hearing and make a final decision. However if the party makes a timely, diligent good faith effort to notify the CHO or Department staff of an emergency or other good reason why he or she could not attend the hearing, the CHO may continue the hearing, re-open the record or reconsider a decision to ensure fundamental fairness.

**10. Record contents, evidence and limits on testimony**

**10.1 Record contents.** The record of a case shall include the items listed in Chapter 2.07 of the Clackamas County Code.

**10.2 Evidence.**

- A. Unless objected to and excluded by the CHO, all evidence that is timely offered will be admitted into the record, including hearsay evidence of a type commonly relied on by reasonably prudent persons in the conduct of their serious affairs.
- B. The CHO may exclude evidence that is irrelevant, immaterial or unduly repetitious. Erroneous rulings on evidence by the CHO shall not be a basis for precluding or modifying a decision unless

shown on the record to have substantially prejudiced the rights of a party.

- C. The CHO shall give effect to the rules of privilege recognized by Oregon law.
- D. Before the close of the public hearing, any party may object to the introduction of evidence. If such an objection is made, the CHO shall rule on it, provided the CHO may allow evidence to be included in the record pending the ruling.
- E. The CHO shall mark any physical evidence received with an identifying number or letter.
- F. The CHO may take official notice of judicially recognized facts and law, including but not limited to, city or County Codes or Ordinances, resolutions and court cases, and may take notice of general technical or scientific facts accepted by the relevant scientific community, provided the CHO shall disclose the name, number and/or nature of the facts or law being noticed pursuant to this paragraph.

**10.3 Limits on testimony.** Testimony shall not be irrelevant, immaterial or unduly repetitive. No testimony offered shall be personally offensive, nor shall testimony be offered for the sole purpose of personally offending another.

## **11. Burden of proof**

**11.1 Generally.** The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.

**11.2 Department burden.** The Department shall bear the burden of proving by a preponderance of the substantial evidence in the whole record that the violation(s) alleged in a particular complaint exist or existed on the relevant date (e.g., on the date of the complaint), and that each Respondent is a substantial factor in causing the occurrence of the violation under the facts and the law.

**11.3 Burden regarding financial hardship.** A Respondent bears the burden of proving by a preponderance of the substantial evidence in the whole record that any financial hardship alleged as a basis for waiving or reducing a civil penalty or administrative fee warrants such relief.

**11.4 Burden of coming forward.** Once a party has met its burden of proof with regard to a particular proposition, the burden of coming forward with evidence to the contrary rests with the opposing party(ies).

**12. Orders and decisions**

**12.1 Orders on motions.** The CHO shall rule on motions in a timely manner, and shall issue a written order within fourteen (14) calendar days on each motion or, if timely, shall include a decision on a motion in a continuing or final order.

**12.2 Continuing orders.**

- A. The CHO may issue a continuing order after a hearing if the CHO determines that the facts or circumstances of the case warrant a continuation. Reasons that a case may be continued include without limitation; so that one or more of the parties may submit further evidence, so that further action can be taken by one or more of the parties, or so that the current status of a violation may be ascertained. In the event of such a continuation, the hearing shall not be considered concluded for the purposes of Chapter 2.07 of the Clackamas County Code.
- B. A continuing order shall be in writing and shall substantially meet the requirements for a final order.
- C. A continuing order may order any of the remedies authorized by the relevant provisions of County Codes, Ordinances, or related state statutes, including imposition, waiver, reduction or

suspension of monetary penalties and fees and/or restrictions on operations or behaviors or dismissal of a complaint.

- D. If the Department determines that a Respondent has complied substantially with the terms of a continuing order, and the Department advises the CHO accordingly, the CHO may issue a final order dismissing the complaint and/or suspending, reducing or waiving the civil penalty and/or fees that were recommended by the Department.
- E. If the Department determines that a Respondent has not complied substantially with the terms of a continuing order, and the Department advises the CHO accordingly, the CHO may:(a) schedule a public hearing to consider what steps to take, or (b) issue a new or additional continuing order, or (c) issue a final order, or (d) use any combination of these alternatives.
- F. On motion from any party and for good cause shown, the CHO may modify a continuing order at any time prior to the filing of a final order. Good cause includes but is not limited to a showing that a party found in violation is unable to comply with the terms of a continuing order due to reasons wholly beyond that party's reasonable control.
- G. Upon a request from the CHO, parties may submit a status report in order to update the CHO on any factual changes or changes to the status of the violation. Such a report shall be in writing or verbally on the record, and shall contain relevant information sought by the CHO.

### **12.3 Final orders.**

- A. In a final order, and to the extent not already done in a continuing order, the CHO shall determine whether the Department met its burden of proof and whether the recommended corrective

action(s), penalties and fees conform to the requirements of County Codes, Ordinances, and any applicable state statute.

- B. The final order shall affirm, dismiss and/or modify a complaint, based on the presence or absence of substantial evidence in the whole record. The final order shall include findings of fact and conclusions of law on which the CHO relies and which support the decision. If the final order does not dismiss the complaint, it shall also include the following:
- (1) The priority and classification of the violation(s).
  - (2) If the violations have not yet been remedied by the Respondent, the action(s) each Respondent is required to take to remedy the violation(s) with or without conditions;
  - (3) A schedule or deadline for completion of each action required;
  - (4) Any monetary penalties and fees for the violation(s) that the CHO finds in his/her sole discretion are warranted and are allowed by Chapter 2.07 of the Clackamas County Code and any applicable Appendixes thereto.
  - (5) Contingencies relevant to the violation and its resolution;
  - (6) Authorization to enforce the final order and any penalties and fees assessed therein, such as by filing a lien on the property in question and/or filing an action in circuit court.
- C. A final order also shall include notice that the order can be appealed pursuant to ORS 34.010-34.100 or, if the order includes a land use decision, appeal will be governed by ORS Chapter 197.
- D. The CHO may submit a draft final order to the parties for review and comment before issuing it.

### **13. Post-decision procedures**

- 13.1 Reconsideration.** Reconsideration of a continuing or final order is not allowed except as provided herein.
- 13.2 Reformation or clarification.** At the request of a party or on his or her own initiative, within ten (10) calendar days after the CHO issues a continuing or final order, the CHO may reform an order to correct any errors of spelling, syntax or labeling or to make the order more internally consistent, clear and certain. If the CHO issues such a reformed or clarified decision, he or she shall send a copy of that decision to the parties as if it was a first decision.
- 13.3 Objections to an order.** A party may object to final order based on specifically articulated legal or factual challenges, provided the CHO receives such objection(s) in writing within ten (10) calendar days after the date the decision is signed.
- A. Within ten (10) calendar days after the CHO receives a timely objection, the CHO shall:
- (1) Issue a written order denying the objection for the reasons provided therein; or
  - (2) Issue a written order modifying the continuing or final order to which the objection was taken; or
  - (3) Schedule the matter for a public hearing and issue a notice for that purpose as provided herein. The CHO may consult with the parties regarding the scheduling of such a hearing.
- B. In general, the CHO shall decide objections to the record without a public hearing and without re-opening the record except for the sole purpose of receiving the objection. The CHO shall only re-open the record and/or schedule a hearing to consider an objection when the objection:
- (1) Requests that the CHO re-open the record or hold a hearing for that purpose; and

- (2) Includes a compelling reason for re-opening the record or for holding a hearing, such as to protect fundamental fairness and to avoid manifest injustice based on the facts and the law in the record.

**13.4 Re-opening the record.** The CHO may only re-open the record after issuing a final order under the following circumstances:

- A. A properly filed objection persuades the CHO that a public hearing is warranted, as provided in CHO Rule 13.3.B;
- B. A properly filed objection persuades the CHO that the record should be re-opened, as provided in CHO Rule 13.3.B, but that a public hearing is not warranted. In such cases, the CHO shall issue a written order to the parties that describe what new evidence and/or argument may be introduced, and schedules introduction of the new evidence and/or arguments. Within fourteen (14) calendar days after the record re-closes, the CHO shall issue a final order as provided herein as though it was a first final order.