



DEPARTMENT OF
Appeals & Hearings

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RULES AND PROCEDURES

ADMINISTRATIVE APPEALS BUREAU

EFFECTIVE JUNE 5, 2018

RULES AND PROCEDURES OF THE DEPARTMENT OF APPEALS AND HEARINGS ADMINISTRATIVE APPEALS BUREAU

PART 1. - GENERAL

R 3.1101. - Issuing Body and Title.

These Rules and Procedures are promulgated by the Department of Appeals and Hearings pursuant to Section 2-111 of the 2012 Detroit City Charter and Section 3-4-4 of the 2019 Detroit City Code and shall be referred to as the "Rules and Procedures of the Department of Appeals and Hearings, Administrative Appeals Bureau."

(R 3.1101; Part 1, Sec. 1.1, eff. 6-5-2018)

R 3.1102. - Effective Date and Publication.

In accordance with Section 2-111 of the 2012 Detroit City Charter, these Rules and Procedures, and any subsequent amendments, shall become effective upon publication in a daily newspaper of general circulation. All effective Rules and Procedures shall be printed and made available to the public. Copies of these Rules and Procedures shall be made available at the Department of Appeals and Hearings, the Office of the City Clerk, each City Department that makes administrative rulings that can be appealed to the Department of Appeals and Hearings, Department of Neighborhood District Offices, and at branches of the Detroit Public Library.

(R 3.1102; Part 1, Sec. 1.2, eff. 6-5-2018)

R 3.1103. - Scope of Rules and Procedures.

The Rules and Procedures shall apply to the conduct of all appeal hearings before the Department of Appeals and Hearings. In the absence of a specific rule governing the conduct of any aspect of an appeal hearing case, the hearing officer shall make a determination on the issue that does not prejudice or affect the substantial rights of the parties.

(R 3.1103; Part 1, Sec. 1.3, eff. 6-5-2018)

R 3.1104. - Amendment of Rules and Procedures.

These Rules and Procedures shall be subject to amendment by the Director of the Department of Appeals and Hearings in accordance with the Section 2-111 of the 2012 Detroit City Code.

(R 3.1104; Part 1, Sec. 1.4, eff. 6-5-2018)

R 3.1105. - Supremacy of Michigan Law, the City Charter, and the City Code.

Nothing in these Rules and Procedures shall act to override, restrict or relax the procedural requirements of any applicable provision of Michigan law, the 2012 Detroit City Charter, or the 2019 Detroit City Code. In the event that these Rules and Procedures conflict with any such provision, Michigan law, the City Charter or the City Code shall take precedence.

(R 3.1105; Part 1, Sec. 1.5, eff. 6-5-2018)

R 3.1106. - Number.

Words used in the singular also apply to the plural, where appropriate.

(R 3.1106; Part 1, Sec. 1.6, eff. 6-5-2018)

R 3.1107. - Computation of time.

In computing a period of time under these Rules and Procedures, the day of the act, event, or default is not included. Where the last day of the period falls on a Saturday, Sunday, legal holiday, or on a day that the Department of Appeals and Hearings is officially closed, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day that the Department of Appeals and Hearings is officially closed.

(R 3.1107; Part 1, Sec. 1.7, eff. 6-5-2018)

PART 2. - OPERATION OF THE ADMINISTRATIVE APPEALS BUREAU

R 3.1201. - Security.

All persons entering the Administrative Appeals Bureau must pass through security and may be subject to inspection.

(R 3.1201; Part 2, Sec. 2.1, eff. 6-5-2018)

R 3.1202. - Prohibited Activities and Items.

The Administrative Appeals Bureau shall be a weapon-, drug-, and smoke-free building. Weapons, including, but not limited to, guns, knives, chemical spray and pepper spray, are strictly prohibited and subject to confiscation without return. At his or her discretion, the Director of the Administrative Appeals Bureau, or his or her designee, may ban any item from the building as contraband.

(R 3.1202; Part 2, Sec. 2.2, eff. 6-5-2018)

R 3.1203. - Other Prohibited Items.

Food or beverages may not be brought into the Administrative Appeals Bureau, except by employees and agents of the City of Detroit performing work-related assignments or by express permission of the Director or the Manager of the Administrative Appeals Bureau.

(R 3.1203; Part 2, Sec. 2.3, eff. 6-5-2018)

R 3.1204. - Disruptive Behavior.

Security personnel may remove, or an administrative hearing officer may order the removal of, any person who is causing or contributing to, or has caused or contributed to a disruption at the Administrative Appeals Bureau, including during any hearing. Any noise from cell phones or other electronic devices shall be considered disruptive behavior by the person using or having the electronic device.

(R 3.1204; Part 2, Sec. 2.4, eff. 6-5-2018)

R 3.1205. - Accessibility.

The Administrative Appeals Bureau shall comply with the requirements of the Americans with Disabilities Act of 1990, and any applicable state law or provisions of the 2019 Detroit City Code governing accessibility to the location and the services provided.

(R 3.1205; Part 2, Sec. 2.5, eff. 6-5-2018)

PART 3. - PRE-HEARING MATTERS

R 3.1301. - Timely Appearance by Attorneys.

Attorneys shall file a written and signed appearance of counsel with the Administrative Appeals Bureau within seven days of the scheduled hearing and serve a copy upon the attorney for the City of Detroit.

(R 3.1301; Part 3, Sec. 3.1, eff. 6-5-2018)

R 3.1302. - Pre-Hearing Settlement Proposals.

The parties, or their attorneys, may enter into a settlement of the case, and/or stipulation of the issue(s), and present same to the hearing officer when the case is called. The hearing officer shall have the discretion to approve or reject a settlement proposal presented by the parties.

(R 3.1302; Part 3, Sec. 3.2, eff. 6-5-2018)

R 3.1303. - Pre-Hearing Motions and Requests.

Pre-Hearing matters should be limited to those matters required in the Pre-Hearing Order, motions for adjournments, and requests for subpoenas pursuant to these Rules and Procedures.

(R 3.1303; Part 3, Sec. 3.3, eff. 6-5-2018)

R 3.1304. - Pre-Hearing Order.

Within seven days of the filing of the appeal, the Administrative Appeals Bureau shall issue a Pre-Hearing Order that shall include a Notice of Hearing, timelines, rules governing the exchange of documents, witness lists, any allowable discovery, and any other pre-hearing and hearing matters deemed appropriate.

(R 3.1304; Part 3, Sec. 3.4, eff. 6-5-2018)

R 3.1305. - Administrative Appeals Panels.

Administrative appeals shall be conducted by a panel of one hearing officer. At the time of filing the Claim of Appeal, a party may request in writing that the appeal be conducted by a panel of more than one hearing officer. The written request for a panel of more than one hearing officer must include proof showing that, due to the uniqueness of the specific facts of the case, the interest of justice would be served with a panel of more than one hearing officer. The Pre-Trial Order issued by the Administrative Appeals Bureau must indicate the ruling on the request for a hearing panel of more than one hearing officer.

(R 3.1305; Part 3, Sec. 3.5, eff. 6-5-2018)

PART 4. - THE APPEAL HEARINGS PROCESS

R 3.1401. - Jurisdiction.

The Administrative Appeals Bureau has jurisdiction of an appeal of an administrative decision of a department or agency, if the rules and procedures of the department or agency issuing the administrative decision, or provision in the 2019 Detroit City Code, provide that an appeal of the administrative decision may be made to the Administrative Appeals Bureau. The Administrative Appeals Bureau does not have jurisdiction of an appeal within the appellate jurisdiction of boards of appeals created or required by other sections of the 2012 Detroit City Charter or 2019 Detroit City Code, or Michigan law.

(R 3.1401; Part 4, Sec. 4.1, eff. 6-5-2018)

R 3.1402. - Time Requirements.

Unless the rule of an issuing City department or agency specifies otherwise, an appeal to the Administrative Appeals Bureau shall be filed no later than 21 days from the date of the administrative decision of the issuing City department or agency.

(R 3.1402; Part 4, Sec. 4.2, eff. 6-5-2018)

R 3.1403. - Manner of Filing.

For an appeal of right from an administrative decision of a City department or agency, the appellee must file the following with the Administrative Appeals Bureau:

- (1) The Claim of Appeal;
- (2) The appeal fee, if applicable;
- (3) The Certification of Right of Appeal; and
- (4) Other documents, including any documents required pursuant to the rules of the City department or agency that issued the decision giving rise to the appeal.

(R 3.1403; Part 4, Sec. 4.3, eff. 6-5-2018)

R 3.1404. - Claim of Appeal.

The Claim of Appeal shall contain:

- (1) Caption. The caption shall include:
 - a. The name of the Department of Appeals and Hearings;
 - b. The name of the department or agency that issued the decision;
 - c. The name of the party subject to the decision; and
 - d. The claim or identifying number from the department or agency.
- (2) Claim. A statement that: "[name of appealing party] claims an appeal from the [name of department/agency] decision entered on [date]."
- (3) Signature. The party appealing or his or her attorney must date and sign the claim of appeal.

(R 3.1404; Part 4, Sec. 4.4, eff. 6-5-2018)

R 3.1405. - Appeal Fee.

The fee for filing an appeal with the Administrative Appeals Bureau shall be in accordance with the rules and procedures of the issuing City department or agency as well as the appeal filing fee set forth in the Department of Appeals and Hearings' Fee Schedule.

(R 3.1405; Part 4, Sec. 4.5, eff. 6-5-2018)

R 3.1406. - Certification of Right of Appeal.

The Certificate of Right of Appeal is a written and signed certification from the City department or agency issuing the administrative decision, and certifies that all remedies at the department or agency have been exhausted, and that the appellee has the right to appeal to the Administrative Appeals Bureau.

(R 3.1406; Part 4, Sec. 4.6, eff. 6-5-2018)

R 3.1407. - Other Documents.

The Claim of Appeal shall also be accompanied by:

- (1) A copy of the administrative decision appealed; and
- (2) Proof that the claim of appeal and other accompanying documents were served upon the other party.

(R 3.1407; Part 4, Sec. 4.7, eff. 6-5-2018)

R 3.1408. - Presentation of the Case.

The City department or agency issuing the administrative decision bears the burden of proof and the City's case may be presented by a City of Detroit employee or representative through live sworn testimony of witnesses, and any documentary evidence. The person subjected to the administrative decision shall be afforded an opportunity to contest the City's case and present defenses.

(R 3.1408; Part 4, Sec. 4.8, eff. 6-5-2018)

R 3.1409. - Representation and Appearances.

Parties may represent themselves or may be represented by an attorney at their own expense. Any attorney appearing on behalf of a person subject to an administrative decision in proceedings before the Administrative Appeals Bureau must file a written and signed appearance of counsel with the Administrative Hearings Bureau. The filing of an appearance prior to a hearing is subject to Rule 3.1301 of these Rules and Procedures which governs the timely appearance of attorneys. The filing of an appearance shall constitute an affirmative representation, under penalty of law, by the attorney signing

the appearance that he or she has been duly authorized by the person subject to the administrative decision to act in the proceedings on the party's behalf. "Proceedings" in this section shall include the hearing and all pre- and post-hearing matters.

(R 3.1409; Part 4, Sec. 4.9, eff. 6-5-2018)

R 3.1410. - Witnesses, Documents, and Exhibits.

Parties are expected to have their witnesses, documents and exhibits available and with them at the hearing. An extra copy of any document intended to be offered into evidence is required. The admission of any evidence is at the discretion of the hearing officer in accordance with these Rules and Procedures.

(R 3.1410; Part 4, Sec. 4.10, eff. 6-5-2018)

R 3.1411. - Constitutional Challenges.

Hearing officers do not have the authority to rule upon the constitutionality of a statute, ordinance, rule, procedure or administrative decision.

(R 3.1411; Part 4, Sec. 4.11, eff. 6-5-2018)

R 3.1412. - Order of the Docket.

The hearing officer shall call the case by name and by number, dispose of any preliminary matters concerning the case, and place any witness under oath. Cases should be called in a manner to achieve a timely and efficient management of the docket.

(R 3.1412; Part 4, Sec. 4.12, eff. 6-5-2018)

R 3.1413. - Subpoenas.

Hearing officers may issue subpoenas for witness and document production upon request of a party and good cause shown. The party requesting the subpoena shall be responsible for the payment of the witness fee, mileage, and/or any document copying fees. All subpoena requests must be on a form provided by the Administrative Appeals Bureau and filed at least ten days prior to the scheduled hearing date. Fees for subpoenas must be paid in accordance with the Department of Appeals and Hearings' Fee Schedule.

(R 3.1413; Part 4, Sec. 4.13, eff. 6-5-2018)

R 3.1414. - Discovery.

Discovery is limited to documents and evidence ordered to be exchanged as outlined in the Pre-Hearing Order issued by the Administrative Appeals Bureau in accordance with Rule R 3.1304 of these Rules.

(R 3.1414; Part 4, Sec. 4.14, eff. 6-5-2018)

R 3.1415. - Evidence.

The Michigan Rules of Evidence as applied in a non-jury civil case in Circuit Court shall be followed as far as is practicable. The hearing officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Admission of any evidence where the admission would be contrary to due process of law is prohibited. Further, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced, all or part of the evidence in an administrative appeals proceeding may be submitted in written form.

(R 3.1415; Part 4, Sec. 4.15, eff. 6-5-2018)

R 3.1416. - Standard of Review.

Unless a standard of review is explicitly provided by ordinance, state law or the rules and procedures of the department or agency issuing the administrative decision, the hearing officer shall determine whether the administrative decision of the department or agency was contrary to the facts of the case such that the administrative decision appears arbitrary or motivated by something other than the facts presented to the administrative department or agency. The hearing officer may only overturn the administrative decision if the decision was unreasonable under the circumstances.

(R 3.1416; Part 4, Sec. 4.16, eff. 6-5-2018)

R 3.1417. - Ruling and Orders.

The administrative hearing officer shall make the final City department or agency decision based upon the evidence presented and shall issue a written decision and order.

(R 3.1417; Part 4, Sec. 4.17, eff. 6-5-2018)

R 3.1418. - Adjournments.

One adjournment may be granted upon finding of good cause by the Administrative Appeals Bureau. Lack of preparation shall not be good cause for an adjournment. The fees for adjournment shall be in accordance with the Administrative Appeals Bureau's Schedule of Fees.

(R 3.1418; Part 4, Sec. 4.18, eff. 6-5-2018)

R 3.1419. - Defaults.

If a party fails to appear for a scheduled hearing, and the hearing officer determines that proper notice was given, the hearing officer shall find the party failing to appear in default and issue a ruling in favor of the party appearing for the hearing.

(R 3.1419; Part 4, Sec. 4.19, eff. 6-5-2018)

R 3.1420. - Interpreters.

The Department shall provide interpreter services upon request by a violator. The request for interpreter services shall be made to the Department of Appeals and Hearings no later than seven days before the scheduled hearing. Interpreters shall be sworn-in and shall swear that he or she will provide an accurate translation of the proceedings.

(R 3.1420; Part 4, Sec. 4.20, eff. 6-5-2018)

R 3.1421. - Public.

Unless otherwise provided by law, all administrative appeal hearings shall be open to the public. In the event of overcrowding, a hearing officer may limit the number of persons allowed in a hearing room in the interest of due process and safety of the parties. In the event of overcrowding, parties to the case shall be afforded priority to the hearing room over persons not a party to the case. While welcome to observe, a member of the general public may not testify at the actual hearing unless formally called as a witness by a party to the case.

(R 3.1421; Part 4, Sec. 4.21, eff. 6-5-2018)

R 3.1422. - Decorum.

Persons appearing at a hearing shall conduct themselves at all times in a dignified, orderly and appropriate manner. During the hearing, all testimony shall be directed at the hearing officer. Direct debate and argument between parties and/or witnesses is not allowed. Persons who fail to conduct themselves with proper decorum shall be subject to appropriate sanctions, including removal from the proceedings.

(R 3.1422; Part 4, Sec. 4.22, eff. 6-5-2018)

PART 5. - RECORDING OF PROCEEDINGS

R 3.1501. - Official Recording.

All proceedings shall be recorded by the Administrative Appeals Bureau by approved means. All other video or audio recording of proceedings is prohibited at the Administrative Hearings Bureau is prohibited. The photographing, broadcasting or televising of the Administrative Appeals Bureau proceedings is prohibited except with the express permission of the Director of the Administrative Hearings Bureau, or his or her designee.

(R 3.1501; Part 5, Sec. 5.1, eff. 6-5-2018)

PART 6. - POST-HEARING MATTERS

R 3.1601. - Motion to Set Aside a Hearing Officer's Final Agency Decision by Default.

A party, or their attorney, may file a written motion to set aside a hearing officer's final agency decision by default. The motion must: 1) be filed within 14 days after the issuance of the final decision; 2) present a good cause reason for failure to appear at the hearing; and 3) present meritorious facts supporting a final agency decision in favor of the moving party. The motion must be accompanied by a filing fee in accordance with the Department of Appeals and Hearings' Fee Schedule. The hearing officer may rule on the motion without a hearing.

(R 3.1601; Part 6, Sec. 6.1, eff. 6-5-2018)

PART 7. - FINALITY OF DECISIONS

R 3.1701. - Administrative Appeals Bureau Decision Final.

The agency decision of the hearing officer shall be final and is not subject to appeal, except as provided by ordinance, state law, or the rules and procedures of the department or agency issuing the administrative decision.

(R 3.1701; Part 7, Sec. 7.1, eff. 6-5-2018)

PART 8. - MISCELLANEOUS MATTERS

R 3.1801. - Reviewing and Copying of Bureau Case Files.

Upon request, public case files maintained by the Administrative Appeals Bureau may be viewed during normal business hours, which are Monday through Friday, 8:30 a.m. to 4:30 p.m. No file item may be removed from the premises. The Administrative Appeals Bureau may require that the request be made in writing. Fees for copies of case files must be paid in accordance with the Department of Appeals and Hearings' Fee Schedule.

R 3.1801; Part 8, Sec. 8.1, eff. 6-5-2018)

R 3.1802. - Forms.

The Director of the Administrative Appeals Bureau shall create and make available forms for use by the parties in the processing adjudication of administrative appeals by the Administrative Appeals Bureau. The use of such forms is required unless otherwise permitted by the Director of the Administrative Appeals Bureau.

(R 3.1802; Part 8, Sec. 8.2, eff. 6-5-2018)