

RULES OF ADMINISTRATIVE HEARINGS

1. Hearing Sessions

Each regular session will convene TBA.

1.1 Hearing Docket

The docket will be set TBA.

2. Participation in Hearing

Any party may participate in the hearing in person, or if the party is a corporation or artificial person, by a duly authorized representative.

2.1 Party's Representative or Counsel

Any party (whether participating or not, in person) may be advised and represented at the party's own expense by a representative or counsel of record.

A representatives or counsel entering an appearance on behalf of a party shall thereafter be the party's representative or counsel of record. Thereafter, all pleadings, filings or communications to the ADMINISTRATIVE HEARING OFFICER shall be directed through the party's representative or counsel of record. Entry of an appearance shall be made in one of the following ways:

- (1) A written request to the ADMINISTRATIVE HEARING OFFICER that an appearance be entered;
- (2) The filing of a pleading;
- (3) The filing of a formal notice of appearance;
- (4) Appearance as party's representative or counsel of record at the hearing;
- (5) Appearance at a docket call;

The ADMINISTRATIVE HEARING OFFICER must be notified in writing of the appearance of a party's representative or counsel of record with an address and phone number. Without such notification, the setting and dismissal of cases will be without "notice" to the party's representative or counsel of record.

2.2 Withdrawal of Representative or Counsel.

No party's representative or counsel of record may be allowed to withdraw except for good cause and by leave of the ADMINISTRATIVE HEARING OFFICER upon motion after notice to the parties.

2.3 No Appearance Entered: Copies of Pleadings.

If the party does not have a representative or counsel of record, copies of the pleadings filed shall be furnished to the party. If a party does not have a representative or counsel of record, that fact shall be called to the attention of the ADMINISTRATIVE HEARING OFFICER before any action is taken on any pleading filed which substantially affects the case.

2.4 Contacting the Administrative Hearing Officer.

A party, a party's representative or counsel of record to a pending action, shall not contact the ADMINISTRATIVE HEARING OFFICER before whom a matter is pending about the merits of the pending matter unless there is an emergency, except by letter or orally with all parties and/or their other representatives or counsel of record present. A copy of all such letters shall be sent to all parties and their representatives or counsel of record.

3. Hearing Files

Copies of all papers and records of the ADMINISTRATIVE HEARING OFFICER shall be maintained by his/her ASSISTANT and the City of Oak Ridge. Files may be withdrawn only by a party's representative or counsel of record with permission of the ADMINISTRATIVE HEARING OFFICER. Copies of the content of files shall be furnished by the ASSISTANT at a reasonable cost.

4. Filing and Serving of Papers

All papers, including pleadings, motions, briefs, and proposed judgments and orders shall be filed or noted by the ASSISTANT with appropriate notation. All judgments and orders, after signed by the ADMINISTRATIVE HEARING OFFICER, shall be filed and entered on the minutes in due course after filed with the ASSISTANT. Papers should not be left with the ADMINISTRATIVE HEARING OFFICER, except under unusual circumstances and when the ASSISTANT is unavailable. All subsequent pleadings or submissions prepared by parties, a party's representative or counsel of record

shall indicate on the face thereof the number of such case as it appears on the Docket. The title of the pleading and the party or parties seeking relief or claim in the pleading should be prominently noted in the “Caption.”

Any communications, filings or papers pertaining to any matter before the ADMINISTRATIVE HEARING OFFICER, shall be addressed to:

ADMINISTRATIVE HEARING OFFICER
City of Oak Ridge, Tennessee
1143 Oak Ridge Turnpike, Suite 107-#234
Oak Ridge, Tennessee 37830

4.1 Names and Addresses of Parties

The names and addresses of all parties involved in the litigation will be included in the style of the case; or if due to the number of litigants; the name and addresses may be included in the body of the complaint.

4.2 Certificate of Service

All papers, except those signed by all parties, a party’s representative or counsel of record, must contain a certificate of service which must contain the date of service and the name of the person or persons served and any other information required by the local rules. The persons filing papers will furnish the specific location where parties can be found. The ASSISTANT may refuse to file papers without a certificate which complies with these rules and all applicable rules.

5. Party, a Party’s Representative or Counsel of Record’s Signature

All pleadings, orders, briefs and other papers submitted for consideration shall be personally, or by facsimile, signed by the party, a party’s representative or counsel of record and his or her individual name, style of the case, telephone number, and address contained thereon.

6. Setting Cases for Hearings and Continuances

The date of the hearing shall be no less than thirty (30) calendar days following the issuance of the citation. A PARTY, PARTY’S REPRESENTATIVE OR COUNSEL OF RECORD MUST MAKE A WRITTEN REQUEST FOR THE HEARING TO THE ADMINISTRATIVE HEARING OFFICER WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF THE NOTICE OF HEARING. IF NO SUCH

REQUEST IS MADE THE PARTY WILL BE HELD IN DEFAULT AND APPICABLE FINES
LEVIED.

6.1 Hearings

Cases shall be set for hearing in one of the following ways:

- a) By agreement of a party, a party's representative or counsel of record after consultation with the ADMINISTRATIVE HEARING OFFICER or through his/her ASSISTANT;
- b) By motion;
- c) By the ADMINISTRATIVE HEARING OFFICER with notice to the party, a party's representative or counsel of record.

6.2 Continuances

Hearings may be continued only by leave of the ADMINISTRATIVE HEARING OFFICER. Cases will not be continued except for good causes which shall be brought to the attention of the ADMINISTRATIVE HEARING OFFICER as soon as practicable before the date of the hearing.

Failure of a material witness to appear at the hearing shall not be grounds for a continuance unless a request for appearance is issued not less than seven (7) business days before the hearing date for witnesses residing in the City of Oak Ridge and for witnesses residing outside of the City of Oak Ridge, and then only upon a proper showing by affidavit that the witness is in fact a material witness.

When a case is set by agreement or set upon motion without objection to have it set, failure to have completed discovery, unavailability of the party, a party's representative or counsel of record on the hearing date, inability to obtain evidence by affidavit, or failure to have completed any other hearing preparation will not be grounds for continuance.

In cases continued, the ADMINISTRATIVE HEARING OFFICER may award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses.

All continuances granted shall be reflected by proper ORDER of the ADMINISTRATIVE HEARING OFFICER setting forth which party continued the case, the reason for the continuance and providing a new hearing date agreeable to all parties, the party's representatives or counsel of record and the new

hearing date reflected in the continuance order. Also, the ORDER shall reflect the fact that the ADMINISTRATIVE HEARING OFFICER has given approval for the continuance. The new hearing date to which the case is continued **may not be given a priority setting**, even though the continued case has a lower case number, unless priority is given by the ADMINISTRATIVE HEARING OFFICER and so reflected in the continuance ORDER.

6.2. Scheduling Cases for Hearing

The ADMINISTRATIVE HEARING OFFICER may hold regular docket soundings for the purpose of setting the docket and scheduling cases. The ADMINISTRATIVE HEARING OFFICER may also schedule such alternate cases as efficiency requires.

7. Pre-Hearing Conference

The ADMINISTRATIVE HEARING OFFICER, in an action set for hearing, upon his/her own motion, or upon motion of one (1) of the parties, a party's representative or counsel of record, may direct the parties to appear before the ADMINISTRATIVE HEARING OFFICER for a pre-hearing conference to consider:

- (A) The simplification of issues;
- (B) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (C) The limitation of the number of witnesses; and
- (D) Such other matters as may aid in the disposition of the action.

The ADMINISTRATIVE HEARING OFFICER shall make an ORDER that recites the action taken at the pre-hearing conference, and the agreements made by the parties as to any of the matters considered, and that limits the issue for hearing to those not disposed of by admissions or agreements of the parties. Such order when entered controls the subsequent course of action, unless modified at the hearing to prevent manifest injustice.

The ADMINISTRATIVE HEARING OFFICER may, upon reasonable notice to all parties, convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the ADMINISTRATIVE HEARING OFFICER sitting alone, to consider argument or evidence, or both, on any question of law.

The ADMINISTRATIVE HEARING OFFICER, may upon his/her discretion, conduct all or part of the pre-hearing conference by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

The ADMINISTRATIVE HEARING OFFICER may, in the event a pre-hearing conference is not held, issue a pre-hearing ORDER, based on the pleadings, to regulate the conduct of the proceedings.

8. Default

If a party, a party's representative or counsel of record fails to attend or participate in the pre-hearing conference, a hearing or other stage of a contested case, the ADMINISTRATIVE HEARING OFFICER may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

If the proceedings are conducted without the participation of the party in default, the ADMINISTRATIVE HEARING OFFICER shall include in the final order a written notice of default and a written statement of the grounds for the default.

9. Hearings

The ADMINISTRATIVE HEARING OFFICER shall regulate the course of the proceedings.

The ADMINISTRATIVE HEARING OFFICER shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

The ADMINISTRATIVE HEARING OFFICER, in his/her discretion and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each

participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

The hearing shall be open to public observation pursuant to title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript produced, if any.

9.1 Evidence

The ADMINISTRATIVE HEARING OFFICER shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of the court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent person in the conduct of their affairs.

The ADMINISTRATIVE HEARING OFFICER shall give effect to the rules of privilege recognized by law and to statutes protecting the confidentiality of certain records, and shall exclude evidence which in his or her judgment is irrelevant, immaterial or unduly repetitious;

The ADMINISTRATIVE HEARING OFFICER may, upon notification as provided herein, admit evidence by affidavit. At any time not less than ten (10) business days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided herein. Unless the opposing party, within seven (7) business days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's rights to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made, the affidavit shall not be admitted into evidence. "Delivery", for purposes of this section, means actual receipt;

The ADMINISTRATIVE HEARING OFFICER may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the municipality. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

The ADMINISTRATIVE HEARING OFFICER may take Official Notice of:

- (i) Any fact that could be judicially noticed in the courts of this state;
- (ii) The record of other proceedings before the agency; or
- (iii) Technical or scientific matters within the ADMINISTRATIVE HEARING OFFICER's specialized knowledge; and

Parties must be notified before or during the hearing or before the issuance of any final order that is based in part on facts or material notice, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

9.2 Notice of Evidence by Affidavit

The notice evidence by affidavit shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here inset name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or proponent's representative or attorney of record) on or before _____ (here insert a date seven (7) business days after the date of mailing or delivering the affidavit to the opposing party).

10. Orders

The ADMINISTRATIVE HEARING OFFICER shall render a final order in all cases. A final order shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order,

including the remedy prescribed. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by concise and explicit statement of the underlying facts of record to support the findings. The final order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The ADMINISTRATIVE HEARING OFFICER's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

If the ADMINISTRATIVE HEARING OFFICER becomes unavailable, for any reason, before rendition of the final order, a qualified substitute shall be appointed. The substitute shall use any existing record and may conduct and further proceedings as is appropriate in the interest of justice.

The ADMINISTRATIVE HEARING OFFICER may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

10.1. Issuance of Final Order

A final ORDER shall be rendered in writing within seven (7) business days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause show.

The ADMINISTRATIVE HEARING OFFICER shall cause copies of the final order under subsection (a) to be delivered to each party.

All final orders shall state when the order is entered and effective.

A party may not be required to comply with the final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

11. Collection of Fine

The City of Oak Ridge may collect a fine levied pursuant to this section by any legal means available to it to collect any other fine, judgment or debt.

12. Judicial Review

A party who is aggrieved by a final decision in a contested case is entitled to judicial review, pursuant to the requirements of T.C.A § 6-54-1017 and 1018.

13. Statutory Authority

The authority, rules and procedures of the ADMINISTRATIVE HEARING OFFICER are derived from and governed by the T.C.A. 6-54-1001 et seq. and the Rules stated herein shall be in accordance with and subordinate to this statutory authority.