

Chapter 11.24

PROCEDURES FOR CONDUCT OF HEARING APPEALS

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11.24.010 General.

11.24.010.01 Hearing Examiners. The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the board for decision.

11.24.010.02 Record. A record of the entire proceedings shall be made by tape recording or by any other means or permanent recording determined to be appropriate by the board.

11.24.010.03 Reporting. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the board, but shall in no event be greater than the cost involved.

11.24.010.04 Continuances. The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by the examiner for good cause shown so long as the matter remains before the examiner.

11.24.010.05 Oaths-Certification. In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

11.24.010.06 Reasonable Dispatch. The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

11.24.020 Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the board of appeals or name of hearing examiner) at on theday of, 20 at the hour, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (board of appeals or name of hearing examiner)."

11.24.030 Subpoenas.

11.24.030.01 Filing of Affidavit. The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

11.24.030.02 Cases Referred to Examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

11.24.030.03 Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

11.24.040 Conduct of Hearing.

11.24.040.01 Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

11.24.040.02 Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

11.24.040.03 Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

11.24.040.04 Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

11.24.040.05 Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

11.24.040.06 Rights of Parties. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called the witness to testify;

5. To rebut the evidence;
6. To be represented by anyone who is lawfully permitted to do so.

11.24.040.07 Official Notice.

11.24.040.07.01 What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

11.24.040.07.02 Parties to be notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

11.24.040.07.03 Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

11.24.040.07.04 Inspection of the premises. The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided the (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

11.24.050 Method and Form of Decision.

11.24.050.01 Hearing before Board Itself. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.

11.24.050.02 Hearing before Examiner. If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time (not to exceed 90 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

11.24.040.05.03 Consideration of Report by Board - Notice. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

11.24.050.04 Exceptions to Report. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.

11.24.050.05 Disposition by the Board. The board may adopt or reject the proposed decision.

11.24.050.06 Proposed Decision Not Adopted. If the proposed decision is not adopted as provided in Section 11.24.050.05, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in Section 11.24.050.02 hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

11.24.050.07 Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

11.24.050.08 Effective Date of Decision. The effective date of the decision shall be as stated therein.

