

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR
MULTNOMAH COUNTY, OREGON

Ordinance No. 130

An Ordinance amending Ordinance No. 89, as amended by Ordinance No. 94 and Ordinance No. 102, authorizing a Merit System Civil Service Council Hearings Officer; establishing procedures in certain Merit System Civil Service Council hearings; and declaring an emergency.

Multnomah County ordains as follows:

Section 1. Policy.

The Board has determined that it is necessary in order that the Merit System be efficiently and fairly administered that the Merit System Civil Service Council should be empowered to utilize a hearings officer in carrying out its hearings functions prescribed under Ordinance 89 and that procedures for conducting hearings be established.

Section 2. Definitions.

As used in this ordinance, unless otherwise provided or unless the context otherwise requires, the following words shall have the following meanings:

A. "Board": the Board of County Commissioners of Multnomah County.

B. "Council": the Merit System Civil Service Council of Multnomah County.

C. "Party": a person entitled under Ordinance No. 89 to be heard on a matter before the Council.

D. "Person": any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Council.

E. "Hearing": a proceeding in which the legal rights, duties, or privileges of a party are required to be determined by the Council after an opportunity for a hearing.

Section 3. Hearings.

A. Adminstrator

1. There shall preside at a hearing an Administrator who shall be:

- a. the chairman of the Council; or
- b. a designated member of the Council; or
- c. a hearings officer appointed as provided in Section 5 of this ordinance.

2. Any Council member may attend any hearing.

3. The functions of the Adminstrator or members participating in decisions in conformity with Section 4 shall be conducted in an impartial manner. The Adminstrator or any member of the Council may at any time withdraw if he deems himself disqualified; and upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of the Adminstrator, the Council shall determine the matter prior to hearing as a part of the record and decision in the case. If the Council finds that

the Administrator's personal bias or disqualification would interfere with a party's right to an impartial hearing, it shall replace him with a new Administrator.

B. Hearing Powers.

The Administrator shall have authority to:

1. Administer oaths and affirmations;
2. Issue subpoenas authorized by Ordinance No. 89, this ordinance or other applicable law on its own motion, or when requested in writing by a party on a showing of the general relevance and scope of evidence sought;
3. Rule upon objections to evidence and receive offers of proof subject to subsection C of this section;
4. Take or cause depositions to be taken whenever the objective of a hearing would be served thereby;
5. Regulate the course of a hearing;
6. Hold conferences for the settlement or clarification of the issues;
7. Rule on procedural matters;
8. Recommend decisions in conformity with Section 4;
9. Call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence;
10. Permit or require the parties to present oral or written arguments and submit proposed findings of fact and conclusions of law; and
11. Take any other action authorized by Council consistent with Ordinance No. 89, this ordinance or other applicable law.

C. Evidence.

1. Every party shall have the right to present its case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full disclosure of the facts.

2. Unless otherwise provided by any law, the Administrator need not observe the rules of evidence enforced by courts of this state, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Administrator shall exclude immaterial, irrelevant, or unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

3. Documentary evidence may be received in the form of copies or excerpts; but parties shall be given an opportunity to compare the copy with the original, unless the original is unavailable for a reason satisfactory to the Administrator.

4. Evidence objected to may be received by the Administrator with a ruling on its admissibility to be made at the time of the final decision. When a hearing will be expedited and the interests of the parties will not be prejudiced thereby, any evidence may be received in written form.

5. Notice may be taken of judicially cognizable facts under the laws of Oregon. In addition, notice may be

taken of generally recognized technical or scientific facts within the Administrator's knowledge. Parties shall be notified either before or during the contested hearing, or by reference in preliminary reports or otherwise, of the material noticed, and they shall be afforded an opportunity to contest the material so noticed. The Administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 4. Decisions.

A. Action By Hearings Officer.

1. The Administrator shall make a report to the Council within 30 days after the close of taking evidence, in writing and including the following:

a. Rulings on the admissibility of offered evidence not ruled on during the hearing;

b. Findings of fact, including all those matters which are either agreed as facts or which are determined by the Administrator, on substantial evidence, to be fact over contentions to the contrary;

c. Conclusions of law on the application of the controlling law to the facts found and the legal results arising therefrom;

d. Recommended decision: the action that the Administrator recommends the Council take based upon the findings of fact and conclusions of law.

2. A copy of the Administrator's report shall be delivered or mailed to each party or to his attorney of record at the time it is delivered to the Council.

B. Final Decision.

1. The Council upon review of the Administrator's report, may adopt it as submitted or revised by the Council, may remand the matter to the Administrator for such further proceedings as it may require, or may require that the entire record be submitted to it to be used as an aid in its final decision.

2. Prior to the final decision by the Council, the parties shall be afforded a reasonable opportunity to present oral or written arguments and to submit:

- a. Proposed findings of fact and conclusions of law;
- b. Exceptions to the recommended decisions of the Administrator; and
- c. Supporting reasons for such exceptions or proposed findings or conclusions.

3. The Council shall issue its final decision within 30 days after receiving the Administrator's report, unless it shall upon notice to the parties extend the period for not more than 60 days.

4. The final decision shall be in writing and shall include the following:

- a. Findings of fact and conclusions of law on all material issues presented; and
- b. The appropriate ruling, order, sanction or relief.

5. A copy of the Council's final decision shall be delivered or mailed to each party and to his attorney of

record, to the employee's department head, to the appropriate bargaining agent and to the director of the Personnel Division of the Office of County Management.

C. Record of Hearing.

The record of each hearing shall include:

1. All written materials;
2. Evidence and testimony received and considered;
3. Matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. The recommended decision of the Administrator;
6. Any other matter submitted to the Administrator or the Council in connection with the hearing;
7. The final decision of the Council;
8. The recording of the hearing pursuant to Section 3.D. of this ordinance.

D. Recording of Hearings.

A verbatim written or mechanical record shall be made of all proceedings. The record need not be transcribed unless requested for purposes of rehearing or court review. The Council may charge the party requesting transcription the cost of transcription, unless the party files an appropriate affidavit of indigency.

E. Ex Parte Consultations.

Unless required for the disposition of ex parte matters authorized by law, members of the Council and the Administrator shall not communicate, directly or indirectly, in connection with

a hearing with any person or party or his representative, except upon notice and opportunity for all parties to participate.

Section 5. The Appointment of a Hearings Officer.

The Council may appoint a hearings officer as Administrator for a hearing. The hearings officer shall be a member of the Oregon State Bar and shall have actively engaged in the practice of law for at least five years prior to the date of appointment. The rate of compensation for the hearings officer shall be fixed by the Board.

Section 6. Section 5 of Ordinance 89, as amended by Ordinance No. 94 and Ordinance No. 102, is further amended by adding the following paragraph:

"C. Nothing in this section or elsewhere in this ordinance shall be construed as prohibiting the Council from designating pursuant to Ordinance 130 a person to preside at any hearing, provided that the final decision shall be made solely by the Council. If such person is designated to preside at any hearing conducted pursuant to Ordinance 130, then all provisions of this ordinance relating to the powers and authority of the Council conducting hearings and investigations pursuant to this ordinance shall be fully applicable to such person."

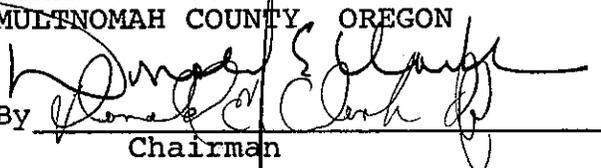
Section 7. Section 23.C. of Ordinance No. 89, as amended by Ordinance No. 94 and Ordinance No. 102, is deleted and the following enacted in lieu thereof:

"C. The hearing shall be conducted pursuant to the procedures set forth in Ordinance No. 130."

Section 8. This ordinance being necessary for the immediate preservation of the public peace, health and safety by reason of the necessity immediately to facilitate the administration of the Merit System, an emergency is declared to exist, and this ordinance shall take effect immediately upon its passage pursuant to Section 5.50 of the Charter of Multnomah County and shall apply to all hearings now pending under Ordinance No. 89, as amended by Ordinance No. 94 and Ordinance No. 102.

ADOPTED this 2nd day of September, 1976, being the date of its first reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By 
Chairman

APPROVED AS TO FORM:


GEORGE M. JOSEPH
County Counsel for
Multnomah County, Oregon