

ORDINANCE NO. 42

AN ORDINANCE ESTABLISHING PROCEDURES FOR CONTESTED CASE HEARINGS.

PUBLIC HEARINGS:

JULY 9, 1976

JULY 23, 1976

DATE OF ADOPTION: JULY 23, 1976

AMENDMENTS:

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 42

AN ORDINANCE ESTABLISHING PROCEDURES
FOR CONTESTED CASE HEARINGS

TITLE PAGE

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The Metropolitan Service District ordains:

REPEALED

Section 1.

The contested case procedures attached as Exhibit A are adopted for use by the MSD.

Section 2.

The attached procedures may be codified in the Code of MSD.

Dated this 23 day of July, 1976.

REPEALED

Miller Duris
Miller Duris, Vice Chairman
Metropolitan Service District

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 76-621

DATE 7-23-76

BY Jean M. Wood
CLERK OF THE BOARD

FOX RIVER
EXCISEBASE
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REPEALED

EXHIBIT A

CONTESTED CASE PROCEDURES

Section 1.0 Definitions.

1.1 Agency. Agency means the Metropolitan Service District of Portland, Oregon.

1.2 Chairman. Chairman means the Chairman of the agency.

Section 2.0 Notice.

2.1 The agency shall give notice to all parties in a contested case. Notice shall include:

.1 A statement of the party's right to hearing, or a statement of the time and place of the hearing.

.2 A statement of the authority and jurisdiction under which the hearing is to be held.

.3 A reference to the particular sections of the statutes, regulations and rules involved.

.4 A short and plain statement of the matters asserted or charged.

.5 A statement that the party may be represented by counsel at the hearing.

.6 A statement that if the party desires a hearing, the agency must be notified within a specified number of days from the date of mailing of notice.

.7 A statement that an Answer will or will not be required if the party requests a hearing and if so, the conse-

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quence of failure to answer, may be satisfied by serving a copy of Section 4.0 upon the party.

Section 3.0 Service Of Written Notice.

3.1 Whenever written notice is required to be served upon a party, the notice shall be personally delivered or sent by registered or certified mail.

3.2 The agency perfects service of a written notice when the notice is posted and addressed to, or personally delivered, to:

- .1 The party, or
- .2 Any person designated by law as competent to receive service of a summons or notice for the party; or
- .3 Following appearance of counsel for the party, the party's counsel.

3.3 A party holding a license issued by the agency or an applicant therefor, shall be conclusively presumed able to be served at the address given in his application until the expiration date of the license.

3.4 Service of written notice may be proven by a certificate executed by the person effecting service.

3.5 In all cases not specifically covered by this section, a rule or a statute, a writing to a person if mailed to said person at his last known address is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

4.0 Opportunity for Hearing; Answer.

4.1 Except as otherwise provided in Section 5.0, before the agency shall by order suspend, revoke, refuse to renew

or refuse to issue a license, it shall afford the licensee, or the license applicant an opportunity for hearing after reasonable written notice.

4.2 The number of days within which the agency must be notified that the party desires a hearing shall be as follows:

.1 Within 20 days of the date of mailing of notice or;

.2 Within 60 days of the date of mailing notice when an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection.

4.3 This section does not apply to any emergency or temporary permit or license.

4.4 Unless waived in writing by the agency, and except as otherwise provided by statute, a party who has been served written notice of an opportunity for a hearing and desires such a hearing shall file with the agency a written answer and application for hearing.

4.5 In the answer, the parties shall admit or deny all factual matters and shall affirmatively allege any and all affirmative defenses the party may have and the reasoning and support thereof. Except for good cause shown:

.1 Factual matters not controverted shall be presumed admitted.

.2 Failure to raise a defense shall be presumed to be a waiver of such defense.

.3 New matters alleged in the answer shall be presumed to be denied; and

.4 Evidence shall not be taken on any issue not raised in the notice and the answer.

4.6 In the absence of a timely answer, the agency may issue a default order against the party, based upon a prima facie case made upon the record for the relief sought in the notice.

4.7 Notwithstanding the provisions of this section, parties may vary their pleadings, orally or in writing at any time with the prior approval of the presiding officer after notice to the other parties.

Section 5.0 Immediate Suspension or Refusal to Renew a License.

5.1 If the agency finds there is a serious danger to the public health or safety and sets forth the specific reasons for such findings, it may suspend or refuse to renew a license immediately without a prior hearing.

5.2 The agency shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall include:

.1 The information required by Section 2.1.

.2 A statement that if the party demands a hearing, the agency must be notified within 90 days of the date of mailing the notice.

.3 A statement giving the reason or reasons for the immediate action.

.4 The effective date of the suspension or refusal to renew the license.

5.3 No hearing need by held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation which is subject to judicial determination by any court of the state, and the order by it's terms will terminate in the case of final judgement in favor of the licensee.

Section 6.0 Default; Orders When No Hearing Requested or Failure to Appear.

6.1 When a party has been given an opportunity and fails to request a hearing within the specified time or having requested a hearing, and fails to appear at the specified time and place, the agency shall enter an order which supports the agency action.

6.2 The order supporting the agency action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

Section 7.0 Subpoenas and Depositions.

7.1 The agency shall issue subpoenas in hearing on contested cases on a showing of need, general relevancy and within reasonable scope of the proceedings.

7.2 An interested party may petition the agency for an order that the testimony of material witnesses be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes.

Section 8.0 Hearing.

8.1 The hearing shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency,

it's governing body or a member thereof or any other person designated by the agency.

8.2 At the discretion of the presiding officer, the hearing shall be conducted in the following manner:

.1 Statement and evidence of agency in support of it's action.

.2 Statement and evidence of affected person disputing agency action.

.3 Rebuttal testimony.

8.3 The presiding officer and the affected parties and the agency or it's attorneys shall have the right to question or examine or cross-examine any witnesses.

8.4 The hearing may be continued with recesses as determined by the presiding officer.

8.5 The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

8.6 Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the agency as part of the record of the proceedings.

Section 9.0 Evidentiary Rules.

9.1 Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

9.2 Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

9.3 All offered evidence not objected to will be

received by the presiding officer subject to his power to exclude irrelevant, immaterial or unduly repetitious matter.

Section 10.0 Proposed Orders.

10.1 If a majority of the officials who are to render the final order were not present at the hearing or have not reviewed and considered the record, and the order is adverse to a party (excluding the agency), a proposed order including findings of fact and conclusions of law shall be served upon the parties.

10.2 The parties shall have fourteen (14) days from the date of mailing or personal service in which to file with the agency and serve upon the other parties a request that the agency review the proposed order.

10.3 Unless a timely request for agency review is filed or unless within the same time limit the agency, upon the motion of its Chairman, or a majority of the members, decides to review it, the proposed order of the Presiding Officer shall become the final order of the agency.

10.4 If the agency review is invoked, then the parties shall be given thirty days from the date of mailing or personal service of the presiding officer's proposed order, or such further time as the agency may allow, to file with the agency and serve upon the other parties written exceptions and arguments to the proposed order. Such exceptions and arguments shall include proposed alternative findings of fact, conclusions of law, and order and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact

made by the Presiding Officer, the agency may make an identical finding without any further consideration of the record.

10.5 The agency may make a finding identical to that proposed by all parties other than the agency without any further consideration of the record.

10.6 Following the expiration of the time allowed the parties to present exceptions and arguments, the Chairman may at his discretion schedule the matter for oral argument before the agency.

Section 11.0 Final Orders.

11.1 Final orders on contested cases shall be in writing and include the following:

- .1 Rulings on admissibility of offered evidence.
- .2 Findings of fact--those matters which are either agreed as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be a fact over contentions to the contrary.
- .3 Conclusion(s) of law--applications of the controlling law to the facts found and the legal results arising therefrom.
- .4 Order--the action taken by the agency as a result of the findings of fact and conclusions of law.

11.2 Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

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