

STANDARD (NON-EMERGENCY) RULE

ATTACHMENT A

Rules for Hearings Pursuant to
Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981

Section 1. Purpose.

These rules have been adopted to facilitate the hearing process under Chapter 1-3 "Quasi- Judicial Hearings," B.R.C. 1981, and as directed by the city manager. These rules are to provide simplification of the issues and to expedite the hearing process, while providing the parties a fair opportunity to be heard. All Code references are to the Boulder Revised Code unless specifically stated differently.

These rules are adopted pursuant to B.R.C. Section 1-3-1, "Legislative Intent and Application of Chapter," and Chapter 1-4, "Rulemaking," to supplement the provisions of Chapter 1-3 "Quasi-Judicial Hearings" of the Code. Chapter 1-3 provides for hearings on specifically-identified issues. These rules are to implement Chapter 1-3, to provide procedural specificity for the parties, and prevent such proceedings from expanding beyond the authority for such hearings. These rules shall apply to all proceedings conducted by a hearing officer pursuant to Chapter 1-3. These rules shall not apply to quasi-judicial hearings before the city council or to boards or commission that have quasi-judicial hearing responsibilities under the Code, unless specifically adopted by a board or commission for a specific hearing.

Section 2. Rules.

The rules promulgated for the conduct of hearings shall be published and kept on file in the office of the city clerk where they shall be available to the public for inspection and copying during normal business hours. Terms used in these rules shall have the same definition as in the Code.

Section 3. Instituting Hearings.

A. Commencement of Chapter 1-3 Hearing Process. In the event an interested party requests a hearing pursuant to Subsection 1-3-3(b), for a final agency action different than the proposed agency action contained in a notice sent pursuant to Subsection 1-3-3(a), these rules shall apply to such a hearing. The notice shall be sent to the agency or the municipal court as specified in the notice of the proposed final agency action. The party requesting the hearing shall be referred to herein as the "appellant." The agency submitting the notice pursuant to Subsection 1-3-3(a) shall be referred to as the "agency." The appellant, the agency, and all other interested parties shall be collectively referred to herein as "party" or "parties."

B. Selection of Hearing Officer. Upon receipt of notice from a party of a request for a hearing pursuant to Chapter 1-3, the city manager shall identify a hearing officer meeting the specifications of Subsection 1-3-5(c). The city manager may name the municipal court as the hearing officer. When sitting in the capacity of a hearing officer, the municipal court shall have the authority granted a hearing officer in Chapter 1-3 rather than authority of the municipal judge for criminal proceedings in municipal court.

C. Notice of Hearing. Unless otherwise specified in an applicable provision of the Code, hearings shall be initiated as provided in these rules. All interested parties shall be notified of a hearing by a Notice of Hearing from the Hearing Officer, or the officer's designee, or the municipal court, as determined by the city manager. The Notice of Hearing shall include the date and location of the

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hearing, the legal authority and jurisdiction under which the hearing is to be held, a copy of the notice of proposed agency action of the City pursuant to Subsection 1-3-3(a), and a copy of the notice filed by the interested person pursuant to Subsection 1-3-3(b). The Notice shall also inform interested parties that failure to appear at the hearing shall result in (a) waiver of any hearing rights as specified in Subsection 1-3-3(b) and (b) the notice of the proposed agency action will become the final decision of the City on the day of the hearing pursuant to Section 1-3-5(j) without further action of the hearing officer.

D. Service of Notice of Hearing. The Notice of Hearing shall be served on the interested parties by U.S. mail, electronic mail, or facsimile as contact information for the interested party may have been provided to the City by the party.

Section 4. Prehearing Procedure; Simplification of Issues.

A. At least 15 days prior to the hearing, the agency shall provide the interested parties with all documents upon which it relied in making its decision.

B. At least 10 days before the hearing, all parties shall provide to the other parties:

1. Any documents intended to be introduced at the hearing;
2. The names and contact information of any witnesses who may be called at the hearing and a brief summary of the witnesses' expected testimony; and
3. Identification of the relevant legal issues to be presented to the hearing officer.

C. At least five days before the hearing, the parties shall provide any additional documents, witnesses or legal arguments that may be presented to rebut the evidence and legal arguments of the other.

D. At least five days before the hearing, the parties or their attorneys shall confer to identify:

1. The record to be reviewed by the hearing officer;
2. Stipulated facts;
3. Evidence that may be introduced at the hearing;
4. Evidence that may be submitted to the hearing officer in writing;
5. Non-disputed legal issues;
5. Disputed legal issues; and
6. If the parties deem necessary, a briefing schedule for disputed legal issues.

The agency shall reduce the stipulations to writing for the hearing officer and the parties, unless the parties agree otherwise. The parties may choose to submit the case on written briefs, supporting data, affidavits or stipulated facts rather than through a hearing with oral testimony and arguments.

E. The hearing officer may require the parties to file a prehearing statement. Unless the hearing officer provides otherwise, a prehearing statement shall present the issues raised by the petition, agreed and disputed facts, copies of exhibits not included with the petition, names of witnesses with a brief statement summarizing their testimony, and an estimate of the time necessary to present the party's evidence only. The purpose of a prehearing statement is to inform the hearing officer and the parties of the issues to be presented, the number of witnesses and exhibits to be presented, the time requested for

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the hearing, and to disclose generally the nature of the testimony to be presented in order to allow a fair hearing of the issues. If a prehearing statement is required and a party fails to list witnesses or to provide copies of exhibits to the prejudice of the other party, the hearing officer may disallow testimony by unlisted witnesses and may refuse to admit unlisted exhibits into evidence, except for purposes of rebuttal.

Section 5. Discovery.

The hearing officer shall respond to requests for discovery pursuant to Subsection 1-3-5(d), and consistent with these rules:

- A. Formal discovery, including without limitation, depositions, interrogatories or subpoenas to present documents at a time or place other than the hearing, shall not be allowed;
- B. The hearing officer may allow limited discovery if necessary to adequately determine the issue subject to the hearing, as such issues are specified in the Code and the Notice of Hearing; and
- C. Should either party fail to comply with these rules, the other party may request the assistance of the hearing officer in seeking compliance with these rules.

Section 6. Modification of Rules.

- A. By Parties. In the event that the parties agree to modify any or all of these rules in order to simplify the hearing process, the hearing officer shall conduct the hearing following the simplified procedures agreed upon by the parties.
- B. By the Hearing Officer. The hearing officer may reduce any or all of the times or deadlines provided in these rules, or eliminate the requirements of Sections 4 or 5 of these Rules for a hearing. In the event the hearing notice sets forth different timelines or requirements governing discovery, the procedures set forth in the hearing notice shall be used in place of the timelines or requirements governing discovery set forth in Sections 4 and 5 above.
- C. By City Manager Prior to Notice of Hearing.
 - 1. Determination on Documents. If the city manager determines the issue subject to hearing can be determined on documents presented by the appellant to the city and city records, the agency may identify such documents in the Notice of Hearing to the parties. In such event, the appellant and interested parties shall have the time set by the hearing officer which shall be no more than 10 days to present to the hearing officer and the parties any other documents and arguments which meet the requirements of these rules to be considered by the hearing officer. After the time set by the hearing officer, the hearing officer shall make the final decision.
 - 2. Elimination of Pre-Hearing Procedures. If the city manager determines the issue subject to hearing can be simplified to eliminate pre-hearing procedures, the Notice of Hearing shall specify that the hearing shall occur without application of Sections 4 or 5 of these Rules.

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Section 7. Subpoenas.

A. Issuance. Subpoenas may be issued pursuant to Subsection 1-3-5(d). A hearing officer may issue a subpoena only if he or she determines that the testimony of the witnesses, or the documents or items sought by the subpoena, are necessary to present evidence that is relevant to the hearing and relates to a contested issue in the case.

B. Content. A subpoena issued by the hearing officer shall identify:

1. The person to whom it is directed;
2. The documents or other items sought by the subpoena, if any;
3. The date for the appearance of the witness and the production of the documents or other items described in the subpoena;
4. The time for the appearance of the witness and the production of the documents or other items described in the subpoena; and
5. The place for the appearance of the witness and the production of the documents or other items described in the subpoena.

C. Appearance. In no event shall the date identified for the appearance of a witness or the production of documents or other items be less than 48 hours after service of the subpoena.

D. Contesting the Subpoena. The recipient of the subpoena may contest the order authorizing the issuance of the subpoena to the hearing officer in writing within 24 hours of receipt of the subpoena, setting forth in detail the recipient's objections to the subpoena. Upon receipt of the contest to the subpoena, the hearing officer shall provide copies to all parties, and review the objections and, upon review, enter the appropriate order.

Section 8. Representation at Hearings.

A. Parties may be represented by an attorney, or may represent themselves, at the hearing. If an interested party is not a natural person, one person may be designated to represent the entity. Other than such designee, no party shall participate in the representation of the entity. For hearings before the municipal court, a non-lawyer may represent the appellant; however the agency may object to representation of a marijuana business by a non-lawyer. Such non-lawyer representative's participation in the proceedings may be limited by the municipal court as deemed necessary by the court to insure that the non-lawyer's participation does not run afoul of the Colorado Supreme Court rules regarding the unauthorized practice of law. An attorney or non-lawyer representative appearing for a party must file an entry of appearance with the hearing officer and the city attorney's office at least forty-eight (48) hours prior to the hearing.

B. The agency may be represented at the hearing by the city employee who issued the notice of proposed agency action, his/her designee, or the city attorney's office.

C. The city attorney's office may have different attorneys represent the agency, different city employees, and the hearing officer so long as such representation is not prejudicial to other parties and meets the requirements of applicable law.

D. A request for withdrawal from representation shall be made by the attorney in writing to the hearing officer and may be granted at the discretion of the hearing officer.

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Section 9. Motions and Briefs.

- A. A party may submit prehearing motions, if determined necessary for the hearing officer to conduct the hearing and make a final decision. No motion shall exceed three pages without approval of the hearing officer.
- B. The parties may submit written arguments of law on any disputed issue of law prior to the hearing. No brief may exceed six pages without approval of the hearing officer.
- C. The form of all motions and briefs shall be consistent with Rule 10, C.R.C.P.

Section 10. Conduct of Hearings.

- A. Continuances. All hearings shall be conducted on the date set for hearing. The purpose of a hearing is to provide a prompt resolution of the matter, and accordingly, the request for and the granting of continuances shall be granted only for good cause shown; at the discretion of the hearing officer. The continuance shall be granted only for the minimum amount of time necessary.
- B. Witnesses.
 - 1. All persons testifying at any hearing before the hearing officer shall be administered a standard oath or affirmation.
 - 2. The party calling a witness shall bear the costs associated with the witness' appearance, if any.
- C. Evidence. Evidence shall be allowed as specified in Section 1-3-5(h).
- D. Burden of Proof. The burden of proof shall be on the appellant by a preponderance of evidence.
- E. Decorum. The hearing shall be opened by the hearing officer with an announcement of the title of the matter and the issue to be heard. The hearing officer shall conduct the hearing in an orderly manner and maintain proper decorum by all persons present at the hearings. The intent of the hearings is to provide the interested parties and the agency full and fair presentation of the issues.
- F. Order of Proceedings.
 - 1. Opening statements may be made first by the appellant, followed by the agency, followed by an opening statement by any other interested party. Any party may waive its opening statement. The time for opening statements may be limited by the hearing officer.
 - 2. Presentation of evidence and witnesses shall proceed with the agency presenting the basis upon which it made its proposed agency decision, then the appellant's presentation of his/her evidence supporting a different decision, response by the agency, response from any interested parties, and rebuttal by the appellant. The hearing officer may ask any question he/she deems appropriate.
 - 3. Cross-examination shall be allowed as necessary to provide a full and true disclosure of facts.
 - 4. Exhibits offered by the agency shall be in consecutive numerical order, beginning with the number 1. Evidence offered by the appellant shall be in consecutive alphabetical order, beginning with the letter "A."

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5. The hearing officer shall follow Section 1-3-5(h) in admitting any testimony that would not be permitted under the Colorado Rules of Evidence. Said section allows such evidence “when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding . . . if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.”
6. The technical rules of evidence shall not apply. Relevant documents may be received into evidence without formal proof of authenticity. The hearing officer has the authority to exclude incompetent and unduly repetitious evidence. The hearing officer shall determine the weight, if any, to be afforded documents received into evidence.
7. Rebuttal evidence may be allowed within the discretion of the hearing officer.
8. At the conclusion of the hearing, closing arguments may be made by the parties. Either party may waive their closing statement. The time for closing arguments may be limited by the hearing officer.

Section 11. Record of Proceedings.

- A. The record of the hearing shall be kept as provided in Subsection 1-3-5(g). Any party may request a transcription of the recording, at its own cost. Any party may request that the proceedings be taken by a certified court reporter. The cost of the court reporter shall be borne by the party requesting the court reporter.
- B. The hearing officer shall maintain the record of the hearing. The record shall include all documents, evidence, transcripts and exhibits tendered as part of the hearing process and the electronic recording of the hearing. If requested by any party, the record shall include the transcript of the proceedings.
- C. The hearing officer shall submit the record to the city clerk within 10 days of the date of the final decision. The record shall be accompanied by a certification from the hearing officer that the record is the full and complete record of the hearing as provided by these rules and Chapter 1-3 of the Code.

Section 12. Final Decision and Orders.

- A. The hearing officer shall issue a written decision with findings of fact and conclusions of law, setting forth the grounds of the decision based on the evidence presented at the hearing. The written decision shall be provided to the parties within 10 days of the conclusion of the hearing, unless the hearing officer determines additional time is necessary. The hearing officer may request the city attorney’s office provide the written form of a decision made by the hearing officer. After all proceedings have been concluded, the hearing officer shall dismiss and excuse all witnesses and declare the hearing closed.
- B. Should the hearing officer find that a violation of a City Code provision has occurred, then the hearing officer shall issue an Order as follows:
 1. The Order shall specify the Code provision or rule violated, and the fine and other relief granted;

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2. If any of the violations found include a failure to obtain a required permit or license, the Order shall require the violator to obtain all such required permits or licenses prior to continuing any activity which requires a permit or a license; and
3. The Order shall contain the following notice:

The fines and penalties contained in this order are a debt due and owing to the City of Boulder and said total of fines and penalties must be paid within 30 days of the date of the order, unless the order is appealed to the District Court as provided in Section 1-3-5(j). Failure to pay a Code infraction sanction, costs, damages or expense within 30 days after the payment is due will result in the city pursuing any legal means for collection, including, but not limited to, obtaining a lien against the property that was the subject of the violation, which lien shall have priority over all liens, except general taxes and prior special assessments. In addition, failure to abide by any order of the hearing officer may constitute a criminal violation of the Boulder Revised Code and may be subject to prosecution in the Boulder Municipal Court.

C. Abatement. The hearing officer may issue any orders necessary to abate the infraction, which abatement order shall provide that a City Code enforcement officer, police officer or their designate may, without a court order, take reasonable steps to abate a Code infraction and prevent it from recurring.

D. Final Order. The Order of the hearing officer constitutes the final decision of the city, and is effective on the date of the Order.

E. Appeal of Final Decision. The final decision may be appealed only as provided in Subsection 1-3-5(j).

F. Violations of Orders. Any person, having received notice and an opportunity for a hearing as provided in Chapter 1-3, who knowingly fails to comply with an order issued by a hearing officer, including the issuance of a subpoena, if the order is not stayed by a court of competent jurisdiction prior to its effective date, shall constitute a criminal violation of the Code and shall be subject to prosecution in Boulder Municipal Court.

G. Fines. All fines, penalties and other monies paid to the city in accordance with this chapter shall be remitted to the City of Boulder.