



CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

Ombudsman's Office

Margie Sollinger, Ombudsman

1221 S.W. 4th Avenue, Room 320, Portland, Oregon 97204

phone: (503) 823-0144

web: www.portlandoregon.gov/auditor/ombudsman



Re: Primer on administrative justice problem and proposal for reform

Background

- City has many distinct administrative appeal processes (close to 200). No set procedural requirements, so each appeal process looks different.
- Administrative appeals are chance for members of public to question or challenge a City government decision that materially affects them.
 - E.g. permit denials, property exclusions, utility bills, lien assessments, vehicle tows.
- May be the only opportunity for person of average or no means to have their “day in court” on something that materially affects them.

Problem

- For many community members, there is effectively no right to appeal.
 - Lack of notice of appeal right. There is no standard requirement that the City notify the affected member of the public when there is a right to appeal a particular City decision. Current notification practices vary widely and many members of the public do not know they have the right to appeal and/or are not given sufficient information to know how to invoke their appeal right.
 - Appeal fees are prohibitively expensive. There is no standard requirement that appeal fees be set at a reasonable amount. Currently, cost to the public for filing an appeal to the Hearings Office varies widely and is left to agency discretion. The filing fee for some appeals is over \$1300.
 - The City's practices are an outlier among jurisdictions offering similar services. It's even an outlier compared to full-blown federal litigation (e.g. \$300 to file an appeal with the U.S. Supreme Court).
 - Many times the cost of the appeal is greater than the amount in question.

- Lack of notice and unaffordable fees disproportionately affect communities of color, low-income households, refugee and immigrant communities, persons with disabilities, seniors, etc.
 - In 2014, 36% of Multnomah County residents fell below the Self-Sufficiency standard, which means they do not have enough income to meet their basic needs.
- Lack of notice and unaffordable fees are correlated with underutilization of administrative appeal avenues to resolve disputes. For example, of seventy available avenues to appeal to Code Hearings Office, only about a dozen are used.

Case Examples

- Individual terminated from low-income discount program for utility bills. Not given any notice of opportunity to challenge termination through administrative appeal process. Appeal to Code Hearings Office would've been more than \$1,300.
- Individuals seeking reduction or cancellation of liens assessed against property because of property maintenance violations. No notice given of administrative review process.
- Group of individuals brought litigation against City regarding zoning code violations. Group skipped filing Code Hearings Appeal and went straight to Circuit Court in part because of prohibitive appeal fee (\$1,215 at that time).

Proposed Solution

- Reduce and eliminate barriers to accessing administrative appeals by establishing baseline requirements and protections.
- Initial reform proposal:
 - Require City to notify people when they have a right to appeal. Notice must be timely and adequate.
 - Institute a nominal filing fee for administrative appeals to the Code Hearings Office.
 - Offer a waiver of the filing fee for those who cannot afford the nominal filing fee.

Commonly raised concerns regarding proposed solution

- Opening the floodgates for appeals
- Enabling frivolous appeals, easier for bad actors to game the system
- Detrimental effect on staff workload and increasing non-recoverable costs to bureaus