

PUBLIC WORKS

RULES & REGULATIONS

OF THE MANAGER OF THE DEPARTMENT OF PUBLIC WORKS, CITY & COUNTY OF DENVER

Adopted Pursuant to Article II
of the Charter of the City & County
of Denver and Section 2-91 et seq.
of the Revised Municipal Code

GOVERNING HEARINGS BEFORE THE
MANAGER OF PUBLIC WORKS

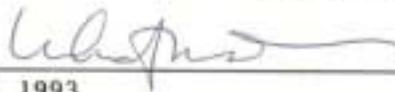
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Approved as to form:

Daniel E. Muse

Attorney for the City & County of Denver



Approved & Adopted:

Michael D. Musgrave

Manager of Public Works

October 15, 1993

CITY AND COUNTY OF DENVER
RULES AND REGULATIONS GOVERNING HEARINGS
BEFORE THE MANAGER OF PUBLIC WORKS

1. These Rules and Regulations are adopted and issued by the Manager of the Department of Public Works of the City and County of Denver in accordance with authority contained in Article II of the charter of the City and County of Denver and in the Revised Municipal Code of the City and County of Denver.

These Rules and Regulations shall govern all hearings before the Manager except hearings concerning proposed vacations of public rights of way and except hearings involving situations when the costs of local public improvements are to be assessed wholly or in part upon the property benefited.

2. These Rules and Regulations are effective on and after October 15, 1993 and supersede all former Rules and Regulations which are or may be in conflict with these Rules and Regulations. Three copies of these Rules and Regulations are filed with the clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, one copy with the Attorney for the City and County of Denver, and one copy in the office of the Manager.

3. These Rules and Regulations may be altered, amended or added to from time to time; and such alterations, additions or amendments shall be binding and of full force and effect as of the date of the filing and publication pursuant to the provisions of Section 2-93 of the Revised Municipal Code of the City and County of Denver.

4. In the event that any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application; and to this end, the various provisions of these Rules and Regulations are declared to be, and are, severable.

5. A copy of these Rules and Regulations shall be made available without charge to those persons filing petitions with the Manager or who, pursuant to a notice of a final determination, have timely sought a hearing or permission to file written objection contesting the determination. Copies shall be provided to the public at \$1.50 each.

6. As used in these Rules and Regulations, unless the context otherwise clearly requires, the following terms shall have the following meanings:

- (a) "City" means the City and County of Denver, State of Colorado.
- (b) "Manager" means the Manager of the Department of Public Works of the City.
- (c) "Hearing Officer" means the Manager or any person serving under the Manager designated to conduct hearings either by the Manager or in the Charter or Ordinances of the City.
- (d) "Petitioner" shall mean any person filing a petition with the Manager concerning any matter over or concerning which the Manager has authority by virtue of and in accordance with the Charter, Ordinances or Rules and Regulations of the City.

7. The Manager, being the Officer of the City charged with the administration and enforcement of the provisions of Article II of the Charter and various articles of the Revised Municipal Code of the City and County of Denver and being empowered to adopt, promulgate and enforce rules and regulations relating to any matter pertaining to said administration and enforcement, and, further, being the Officer having authority to correct or adjust any statement for services submitted when necessary to accomplish the intent of the Council and Mayor of the City, shall be the Officer charged with making the final determination and order upon which jurisdiction may be based in proceedings in the District Court of the Second Judicial District of the State of Colorado to review all questions of law and fact so determined by the Manager by writ or process under Rule 106(a)(4), C.R.C.P., or other proceeding in the nature of certiorari by virtue of which the exercise of quasi-judicial functions may be reviewed for abuse of discretion or exceeding the jurisdiction vested in the Manager, except that such decision-making responsibility may be delegated as provided herein.

8. The Hearing Officer shall determine those claims and petitions that are made in compliance with the requirements of the Charter, Ordinances and Rules and Regulations of the City. In such case, the Hearing Officer shall be charged with performing all functions relating to the final determination and order, and entertaining petitions or protests made either orally or in writing as set forth in the Charter, Ordinances, or Rules and Regulations of the City. The Hearing Officer shall perform those duties and functions necessary and incidental to determining the matter, issuing subpoenas, authorizing depositions, hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting as a hearing tribunal and quasi-judicial proceeding in conformance with the procedures and time limitations set forth in the Charter, Ordinances, or Rules and Regulations of the City, having and exercising all powers given to the Manager therein.

9. All hearings or, when a petition is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the Manager, unless the Manager, in his discretion, assigns another Hearing Officer to conduct the hearing or to examine the written material submitted.

10. Cases shall be set for hearing in the order in which the petition is filed with the Manager; provided, however, the Manager may accelerate cases of particular significance which he determines should be advanced on the docket.

11. The Petitioner shall file a legible original petition with the Manager. All petitions, briefs and other papers shall be either typewritten or legibly printed, and when the letters or figures are faint or illegible, the Manager may refuse to accept the filing. Whenever the material is filed by mail, and the Manager refuses to accept it because of illegibility, the Manager shall promptly notify the Petitioner of such refusal and the reason for it.

12. Upon receipt of a petition, the Manager shall assign a case number and Hearing Officer to it and record the filing of the petition in the docket book. The Hearing Officer shall assign the time and place for hearing the case, unless it is submitted on written brief and supporting material. The Hearing Officer shall notify the Petitioner of the hearing; provided, however, that in the discretion of the Hearing Officer, parties to the hearing may be required to file a prehearing statement before the case is set for hearing. The 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 Petitioner's evidence only.

13. No particular form of petition is required; provided, that the following information is set forth:

- (a) The amount and type of claim or dispute involved and the time during which it accrued or occurred..
- (b) The date of the payment, if any, to the City.
- (c) The reasons the Petitioner believes the determination is objectionable, incorrect or illegal.
- (d) The name, address and telephone number of the legal representative of the Petitioner who is authorized to present the case.
- (e) The name and address of the Petitioner.
- (f) The signature of the Petitioner or its corporate agent.

14. The Hearing Officer may, in his/her discretion, require a representative of the City to file a response to the petition or to furnish such information as the Hearing Officer determines to be necessary prior to hearing or determining the case.

15. All testimony in proceedings before the Hearing Officer shall be given under oath administered by the Hearing Officer in substantially the following form:

"I solemnly (swear by the Everliving God, or affirm by my person) that the testimony I am about to give is the truth, the whole truth, and nothing but the truth (so help me God)."

16. The order of proceedings in hearings shall be as follows:
 - (a) Docket call by Hearing Officer.
 - (b) Opening statement by Petitioner and by the representative of the City (Respondent), unless waived by either party or reserved by Respondent until the opening of the Respondent's case.
 - (c) Presentation of evidence by Petitioner, allowing cross-examination by Respondent (exhibits shall be lettered for identification by the Hearing Officer).
 - (d) Presentation of evidence by Respondent with cross-examination by Petitioner (exhibits shall be numbered for identification by the Hearing Officer).
 - (e) Rebuttal and rebuttal evidence, if any.
 - (f) Closing argument by Petitioner followed by answering argument from Respondent with opportunity to reply to answering argument by Petitioner, if any argument is desired by the Hearing Officer, who may, alternatively, request the submission of written briefs. If the Petitioner chooses not to present a closing argument, none shall be allowed Respondent.

17. The conduct of hearings and the admission of evidence shall generally be in accordance with these Rules and Regulations

without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules; provided, that the Petitioner shall have the burden of proof to show the correctness of the position of the Petitioner, and the rules of evidence and standard of proof shall conform with those in civil, nonjury cases in state district court. The admissibility of evidence shall be encouraged, however, and the Hearing Officer may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The Hearing Officer may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of evidence presented.

18. Carbon copies, photographic copies, and copies made by duplicating machines may be admitted into evidence or substituted in evidence in place of original documents.

19. Whenever a Petitioner chooses to submit the case on written briefs, supporting data, depositions, affidavits or stipulated facts, rather than through oral testimony, the Respondent shall not be allowed an oral presentation, but must submit its position in writing.

20. A Petitioner who is a natural person may appear in person to represent himself or be represented by an attorney admitted to practice in any of the United States; however, a corporate Petitioner must be represented by an attorney admitted to practice in any of the United States unless the Hearing Officer allows a corporate officer to represent the corporation.

21. Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Hearing Officer.

22. Hearings shall be recorded by electronic means and transcripts of such recordings shall be made at the expense of the party requesting the transcript. The Petitioner may employ at its own expense a general or certified shorthand reporter.

23. Whenever it appears that a petition is not filed within the time permitted by the particular law or rule or regulation involved, or that the Hearing Officer for some other reason lacks jurisdiction, the case may be dismissed on the motion of any party or the motion of the Hearing officer.

24. The Hearing Officer may permit the appearance for argument only, written or oral, of amici curiae; provided, that the amici argument be limited to the issues framed by the Petitioner.

25. Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of the particular law or rule or regulation involved, and in any instance where these Rules and Regulations are inconsistent or allegedly inconsistent with the provisions in such law, rule or regulation, such provisions shall govern as determined by the Hearing Officer.