

Rules for One-Call Hearings at Chicago Department of Transportation

The Commissioner of Transportation hereby issues the following rules for review hearings held as part of the One-Call Adjudicatory Process. The rules are promulgated pursuant to Sections 2-102-030(l), 10-21-030(a), and 10-21-220(c) and (g) of the Municipal Code of Chicago.

Section 1 Definitions

“Chapter 10-21” means the Chicago Underground Facilities Damage Prevention Ordinance, Chapter 10-21 of the Municipal Code of Chicago.

“Commissioner” means the Commissioner of Transportation or his designee.

“Respondent” means any person who is not the City, one of its departments, or an employee of the City, who was charged with a violation of Chapter 10-21.

Section 2 Requirements Prior to Scheduling a Hearing

2.1 Petition for a hearing

Once the Commissioner has issued a decision finding a respondent liable for a violation of Chapter 10-21, a respondent may request review of the decision by filing with the Commissioner a written request within 30 days of issuance of the notice of liability.

2.2 Requirement to hold hearing

The Commissioner will grant and schedule a review hearing after a decision by the Commissioner only when the following conditions are all met:

- (a) the person requesting the hearing is the respondent, the respondent’s attorney, or the respondent’s authorized representative;
- (b) the Commissioner found the respondent liable; and
- (c) the respondent filed a written request for review within 30 days of the issuance of the Commissioner’s decision.

Section 3 Pre-Hearing Matters

3.1 Pre-Hearing Motions

Pre-hearing motions are limited to motions for subpoenas and continuances.

3.2 Discovery

There is no written discovery at the review hearing stage of the One-Call Adjudicatory Process. Parties were required to submit all relevant written materials to be considered by the Evaluation Panel. Those materials, collected as the record as detailed in Rule 3.3, are available for the Administrative Law Officer to review in determining whether the decision is clearly erroneous.

3.3 Record

The parties and the Administrative Law Officer shall all be issued a copy of the record that was before the Evaluation Panel. The pages of the record should be Bates stamped or otherwise paginated for ease of reference. Delivery of the record may be by electronic correspondence in a form acceptable to the receiving party, or by mail. The Administrative Law Officer shall receive a copy with sufficient time to review the record prior to the hearing.

Section 4 Procedure of the Hearing

4.1 Introduction and Opening Remarks

The Administrative Law Officer will begin with introductions of the participants. Opening remarks should briefly inform the litigants as to the nature and manner of the proceedings.

4.2 Nature of the Proceedings

The Administrative Law Officer considers whether the Commissioner's decision of liability was clear error. As such, the Administrative Law Officer gives deference to the Evaluation Panel's findings of fact and the Commissioner's decision.

4.3 Documents

The record, as defined in Rule 3.3, shall be available for all parties and the Administrative Law Officer to review during the hearing. No new documents may be introduced at the hearing unless they were unavailable to be submitted by the respondent for consideration by the Evaluation Panel. An unavailable document is one that a party could not have acquired prior to submission for consideration by the Evaluation Panel. Affidavits of witnesses are not admissible at the hearing unless the Administrative Law Officer finds that the proffered testimony is relevant and the witness is unavailable to appear under subpoena.

4.4 Presentation of the Respondent's Case and Defenses

As the respondent has the burden of proving clear error, the respondent presents his case first, and must establish that the Commissioner's decision is clearly erroneous based on the written materials presented to the Evaluation Panel and witness testimony during the review hearing. The respondent shall be afforded an opportunity to contest the allegations and/or present defenses. The defenses available to the respondent and the manner in which they may be presented are governed by Chapter 10-21.

4.5 Presentation of the City's Case

The City may seek leave to make technical amendments to its pleadings prior to a final decision being made by an Administrative Law Officer.

4.6 Constitutional Challenges

Administrative Law Officers may not rule upon the constitutionality of a statute, ordinance, or rule. However, parties may make an objection to the constitutionality of a statute, ordinance, rule, or other legislative or administrative action for the record. Administrative Law Officers shall accept evidence proffered as to a constitutional challenge.

4.7 Witnesses and Exhibits

Parties are expected to have all of their witnesses and exhibits available and with them at the hearing. Litigants will be expected to be able to direct the Administrative Law Officer's attention to the page of the Evaluation Panel's record.

4.8 Questions by the Administrative Law Officer

An Administrative Law Officer may ask questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record. Parties shall be given an opportunity to examine any witness based on the questions by the Administrative Law Officer.

4.9 Closing Arguments

Each party will be afforded an opportunity to make a closing argument.

4.10 Ruling

At the conclusion of the hearing, the Administrative Law Officer shall make a decision on the basis of the admissible evidence, testimony, and arguments presented and enter a written order in the matter as to whether the Commissioner's decision was clearly erroneous.

Section 5 Recording of Proceedings

5.1 Official Recording

All proceedings, including telephonic, should be recorded by audio tape or by other means approved by the Commissioner from start to finish. Parties may, at their own cost, provide a certified or licensed court reporter to record the proceedings. Video or audio recording, by means other than the above, is prohibited.

5.2 Cameras and Other Non-authorized Audio/Visual Recording or Broadcasting Devices

The photographing, broadcasting, or televising of proceedings before the review hearing is prohibited. For purposes of this rule, the use of the terms "photographs," "broadcasting," and "televising" include the audio or video transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmission and recording devices. This rule does not limit the use of security cameras or official audio recording pursuant to Rule 5.1.

Section 6 Presence at Hearings

6.1 Representation

Parties may represent themselves, or may be represented by an attorney or authorized representative at their own expense.

6.2 Appearances

Any and all counsel or other persons appearing on behalf of a respondent in proceedings before the One-Call review hearing must file a written and signed appearance with the Administrative Law Officer. The filing of an appearance shall constitute an affirmative representation, under penalty of law, by the person signing the appearance that the individual has been duly authorized by the respondent to act on the respondent's behalf in the proceedings. "Proceedings" as defined in this section includes any and all requests for a continuance, hearing, or default set-aside.

6.3 Public

Unless otherwise provided by law, all review hearings shall be open to the public. In the event of overcrowding, however, an Administrative Law Officer may limit the number of persons allowed in a hearing room in the interest of safety and due process to the litigants. In the event of overcrowding, litigants shall be afforded priority to the hearing room over non-litigants. Members of the general public, while permitted to observe, may not testify in the actual hearing proceedings unless formally called as a witness by the City or the respondent.

6.4 Decorum

Individuals in review hearings shall conduct themselves at all times in a dignified, orderly, and appropriate manner. During the hearing, all individuals shall address themselves to the

Administrative Law Officer and avoid direct debate or argument amongst themselves. Individuals who fail to conduct themselves with the proper decorum risk being removed from the proceedings.

Section 7 Failures to Appear

7.1 Return for Re-Noticing

In matters where a respondent fails to appear for a scheduled hearing, the Administrative Law Officer shall examine the file to determine if the City has a proof of service. If the City failed to issue service of the notice of hearing, the case may be continued to afford the City an opportunity to re-notice.

7.2 Default

If a respondent or the respondent's counsel fails to appear for a hearing, and the Administrative Law Officer determines that notice was afforded, the Administrative Law Officer should find the respondent in default and deny the request for review. The decision will remain the decision of the Commissioner. However, should the Administrative Law Officer be apprised of an agreement of the parties to a continuance, the Administrative Law Officer in his discretion may continue the matter.

Section 8 Post-Hearing Actions

8.1 Post-Hearing Motions.

A final order of the Administrative Law Officer shall terminate the proceedings. Except pursuant to Sections 10-21-320 and 10-21-330, no post-hearing motions may be heard.

8.2 Petition to Set Aside a Default Order

Pursuant to Section 10-21-330 of the Municipal Code of Chicago, a party may file a written motion to set aside a default order.

An Administrative Law Officer may vacate a default under one of the following two bases: 1) the motion has been filed within twenty-one days after the issuance of the default order and the respondent presents a good cause reason for its prior failure to appear for a hearing, or 2) the City failed to issue service of the notice of hearing.

The movant must also be prepared to proceed with an immediate hearing if the motion is granted. If the movant fails to appear on the date and time the motion is scheduled for a hearing, the motion will not be heard and will be denied. Subsequent motions to set aside for good cause will not be heard if they are outside the twenty-one day time limitation. "Issuance of the default order" shall be the date that the default order was deposited in the United States mail.

8.3 Appeal to the Circuit Court

Upon becoming final, an order of an Administrative Law Officer shall be subject to review in the Circuit Court of Cook County under the Illinois Administrative Review Act, 735 ILCS 5/3-101, *et seq.*, which allows either party thirty-five days to appeal.