

CHAPTER 2.35 CONTESTED CASE PROCEDURES

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2.35.030 Civil Penalties

2.35.010 Purpose; Statutory Authority

The purpose of DCC 2.35 is to implement an administrative hearing process, compliant with applicable provisions in ORS Chp. 183 and OAR Chp. 333-157, to facilitate enforcement of public health violations, including those identified in ORS Chp.624, ORS Chp. 448, and ORS Chp. 446. This chapter shall be known as the Deschutes County Contested Case Procedures Code and may be referred to herein as “this chapter.”

HISTORY

Adopted by Ord. 2026-xxx §1 on 3/18/2026

2.35.020 Contested Case Procedures

A. Any operator of a facility or water system licensed by the County alleged to be in violation of applicable provisions of ORS Chp. 624, ORS Chp. 448, or ORS Chp. 446 and against whom Deschutes County Public Health seeks to impose civil penalties, may request an administrative hearing pursuant to this chapter.

B. “Hearings Officer” means the person designed by the County to preside over administrative hearings conducted pursuant to this chapter. The person so designated may not have any direct personal or financial interest in the contested matter.

C. For purposes of this section, “Operator of a Licensed Facility or System” means:

1. Each person entitled as of right to a hearing before the Board;
2. Each person named by the County to be the owner or operator of a licensed facility or system; or
3. Any person or entity requesting to participate in the administrative hearing as a party or in a limited party status and the County determines either has an interest in the outcome of the County’s administrative hearing or represents a public interest in such result.

D. Filing Request for Administrative Hearing. The operator of the licensed facility or system must file and the County must receive a written (hard copy, not fax or electronic) Request for Administrative Hearing no later than twenty-one (21) days after receipt of the County's Notice of Intent to: deny, revoke, or suspend a license, or to levy civil penalties due to operation of a facility or drinking water system without required permit and inspections. If the twenty-first day falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next regular business day. The Notice of Intent shall be deemed received no later than three (3) days after issuance of same.

E. Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

F. Unless precluded by law, informal disposition may be made of any case by stipulation, agreed settlement, consent order, default or written agreement.

G. The assigned Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communications, if any, on a fact in issue made to the Hearings Officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

H. The record in support of a decision shall be made at the time set for hearing or any extension thereof approved by the Hearings Officer. Testimony may be given without oath or affirmation. Cross-examination of witnesses by parties shall not be allowed. Provided however, the Hearings Officer may question any witness appearing before him/her. A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The Hearings Officer shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the Hearings Officer. The record need not be transcribed unless requested for purposes of court review. The party requesting transcription shall pay the cost thereof.

I. Evidence in contested cases. In contested cases:

1. Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude action on the record if shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Hearings Officer shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

2. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in paragraph (4) of this subsection, no

other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a case rests on the proponent of the fact or position.

3. Every party shall have the right to submit rebuttal evidence.

4. The Hearings Officer may take notice of judicially cognizable facts. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

5. Cross-examination of witnesses is not allowed, however, questions may be tendered to the Hearings Officer who may then direct all or some of such questions to a witness.

J. Costs. The Hearings Officer may allocate the County's costs for the hearing between the operator of the licensed facility or system and the County. The allocation shall be based upon facts found by the Hearings Officer and stated in the Hearing Officer's decision that, in the Hearings Officer's opinion, warrant such allocation of costs. If the Hearings Officer does not allocate costs, the costs shall be paid in full by the operator of the licensed facility or system.

K. The Hearings Officer shall issue a written, proposed final order, including findings of fact, conclusions of law, and imposition of civil penalty, if any, and furnish a copy thereof on all parties. The proposed order shall become final no later than seven (7) days following the date of the proposed order, unless the Hearings Officer within that period issues an amended order.

HISTORY

Adopted by Ord. 2026-xxx §1 on 3/18/2026

2.35.030 Civil Penalties

The Hearings Officer is authorized to impose civil penalties as allowed by ORS Chp. 183 and OAR Chp. 333.

HISTORY

Adopted by Ord. 2026-xxx §1 on 3/18/2026