

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

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TITLE CONDUCT OF HEARINGS INVOLVING POLICE-REGULATED BUSINESSES AND OCCUPATIONS	Effective Date February 1, 2018		

1. PURPOSE

- 1.1. This regulation provides a procedure to expeditiously act on appeals from decisions of the Chief of Police with respect to denials, suspensions, or revocations of police permits, or conditions placed on police permits.
- 1.2. Consistent with City Charter sections 260 and 265, this regulation establishes policies and procedures for conducting administrative hearings under Chapter 3, Article 3, Division 5 of the San Diego Municipal Code, relating to police-regulated businesses and occupations.
- 1.3. When a hearing is required by law, the *Appellant* will have notice of the hearing and an opportunity to appear before an *Adjudicator*.
- 1.4. A copy of this regulation shall be furnished to the *Appellant* and to any *Party*, upon request.

2. SCOPE

- 2.1. This regulation applies to those persons wishing to appeal regulatory action taken by the Chief of Police with regard to denials, suspensions, or revocations of permits for police-regulated businesses and occupations, or conditions placed on police permits, and to those individuals directly involved in the appeal process.

3. DEFINITIONS

- 3.1. *Appellant* – a person claiming a benefit, right, or privilege as a result of a decision by the Chief of Police to deny an application for a police-regulated business license or permit, or to revoke or suspend a police-regulated business license or permit.
- 3.2. *Party* – the *Appellant* and the Chief of Police or designee.
- 3.3. *Adjudicator* – a person appointed by the Mayor or designee to conduct a hearing.

(Supersedes Administrative Regulation 10.10, Issue 3, effective February 6, 1980)

Authorized

(Signature on file)

CHIEF OPERATING OFFICER

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4. POLICY

- 4.1. It is the policy of the City that appeals from regulatory action taken by the Chief of Police relating to permits for police-regulated businesses and occupations shall be heard by an *Adjudicator* and follow due process of law in accordance with the procedures set forth in Paragraph 6.

5. RESPONSIBILITY

5.1. *Appellant*

- 5.1.1. *Appellant* must file a timely appeal to the Mayor or designee.
- 5.1.2. *Appellant* must demonstrate good cause for noncompliance with required time requirements in writing.
- 5.1.3. *Appellant* must be present at all hearing dates unless otherwise stipulated to by the *Parties*.
- 5.1.4. *Appellant* must comply with all discovery requirements and evidentiary rulings made by the *Adjudicator*.

5.2. Mayor or Designee

- 5.2.1. The Mayor or designee is responsible for providing a hearing and arranging for an *Adjudicator*.

5.3. *Adjudicator*

- 5.3.1. The *Adjudicator* must provide notice to all *Parties* of the hearing date and the final written decision.
- 5.3.2. The *Adjudicator* must be fair and impartial.
- 5.3.3. The *Adjudicator* must audio record the proceedings, make a clear administrative record, and maintain all evidence that was admitted during the hearing.

6. ADMINISTRATIVE APPEAL HEARING PROCEDURES

6.1. Delivery of Notice by Mail

- 6.1.1. Except as provided in Paragraph 6.7.5., whenever notice by mail is authorized

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under these procedures or Chapter 3, Article 3, Division 5 of the San Diego Municipal Code, the notice or paper must be deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the person to whom it is to be delivered at his or her last known address.

6.1.2. Notice by mail is presumed delivered five (5) calendar days after its postmark.

6.2. Notice of Appeal of Regulatory Action

6.2.1. The *Appellant* must file a written notice of appeal within ten (10) calendar days from the date of receipt of a written notice from the Chief of Police to deny, revoke or suspend a license or permit, or placing conditions on a permit, to the Mayor or designee pursuant to Chapter 3, Article 3, Division 5 of the San Diego Municipal Code.

6.3. Appointment of *Adjudicator* and Notice of Hearing

6.3.1. Upon City's receipt of a notice of appeal, the City will arrange for an *Adjudicator* and schedule a hearing.

6.3.2. The *Adjudicator* assigned to the case shall not have been connected in any manner in the decision to take the proposed action which is the subject of the appeal.

6.3.3. The *Adjudicator* shall hold the hearing not less than five (5) but not more than thirty (30) calendar days from the date of receipt of the notice of appeal by the Mayor or designee, unless otherwise stipulated to by the *Parties*.

6.3.4. The *Adjudicator* shall provide notice to the *Appellant* and to all *Parties*, including the Chief of Police, and shall hold the hearing at such a place as may be most convenient to the *Adjudicator*, to the *Appellant*, and to all *Parties*.

6.4. Rules of Evidence Applicable to Hearings

6.4.1. The hearing need not be conducted according to statutory rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence may be excluded.

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6.4.2. Each *Party* shall have these rights: to call and examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which *Party* first called the witness to testify; and to rebut the evidence against the *Party*. If the *Appellant* does not testify on his or her own behalf, the *Appellant* may be called and examined as if under cross-examination.

6.4.3. The *Adjudicator* may consider hearsay evidence as part of his or her determination except that no finding may be based solely on such hearsay evidence unless the hearsay evidence is supportive or supplementary to other legally competent evidence. Hearsay may be used if it would be admissible in a civil action. In reaching his or her decision, the *Adjudicator* may consider arrests as evidence of unlawful activity if the frequency and nature of the arrests support this finding. The *Adjudicator* shall consider arrest reports and other police records as evidence pursuant to sections 1271 and 1280 of the California Evidence Code, if proper foundation is established.

6.5. Representation by Counsel

6.5.1. Legal representation in administrative hearings is not required. However, both the City and the *Appellant* are entitled to be represented by legal counsel, if desired. Any attorney representing a *Party* in an administrative hearing must be an active member of the State Bar of California.

6.5.2. If the *Appellant* chooses to be represented by an attorney, written notification of the attorney's name, address, and phone number must be provided to the Office of the Chief of Police at least seven (7) calendar days prior to the hearing.

6.5.3. The City may be represented by the Chief of Police or designated representative, pursuant to City Charter sections 260 and 265, and Chapter 3, Article 3, Division 5 of the San Diego Municipal Code. The Chief of Police may request legal representation at the administrative hearing through the City Attorney's Office.

6.5.4. After an attorney appears at a hearing on behalf of a *Party*, or after the filing of written notice that an attorney is appearing on behalf of the *Party* (whichever occurs first), all notices shall thereafter be served upon such counsel. The final written decision shall be mailed to the *Appellant* in accordance with Paragraph 6.7.5.

6.6. Conduct of Hearing by Adjudicator

6.6.1. If the *Appellant* or *Appellant's* counsel fails to appear at the hearing, the appeal is

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abandoned and the action of the Chief of Police is final.

- 6.6.2. Either *Party* may, at its own expense, request that the hearing be recorded by a certified stenographer. The *Party* making such request shall provide a complete hearing transcript to the *Adjudicator* and to the other *Party*, at no cost.
- 6.6.3. The *Adjudicator* will read the title of the case and ask for appearances from all *Parties*. This information shall be recorded in the official file of the hearing. The *Adjudicator* will inquire if all *Parties* are ready to proceed and will record the names of all witnesses and *Parties* who are present.
- 6.6.4. If all *Parties* are ready to proceed, the *Adjudicator* will mark for identification only, and not as evidence, all papers in the official file of the hearing, which should include:
- a. The notice of appeal of *Appellant*.
 - b. The notice to the *Appellant* of the date set for hearing, with proof of service.
 - c. All reports and materials provided by the City upon which the Chief of Police relied in taking the proposed administrative action. Copies of all such reports and materials, including legal briefs and witness lists, shall have previously been supplied to *Appellant*, his representative, or other interested *Parties* not less than five (5) calendar days in advance of the hearing.
 - d. All reports and materials provided by the *Appellant* upon which the *Appellants* intend to rely as part of the defense to the Chief of Police's proposed administrative actions. Copies of all such reports and materials, including legal briefs and witness lists, shall have been previously supplied to the Chief of Police or other interested *Parties* not less than five (5) calendar days in advance of the hearing.
 - e. With respect to paragraphs c and d, above, at the *Adjudicator's* discretion, he or she may either exclude untimely materials or, upon a showing of good cause by the moving party, accept untimely materials. The *Adjudicator* also has discretion to reschedule the hearing if, in his or her judgment, acceptance of late materials justifies a continuance. However, in deciding whether to continue a hearing, the *Adjudicator* shall consider the degree to which any party may be prejudiced.
 - f. Other documents in the official file.

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- 6.6.5. The hearing shall be conducted in the English language. The *Party* wishing to introduce testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter, approved by the *Adjudicator* conducting the proceeding as proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the *Party* providing the interpreter.
- 6.6.6. All testimony before the *Adjudicator* shall be under oath or affirmation administered by the *Adjudicator*.
- 6.6.7. The Chief of Police or representative shall present any evidence and shall have the burden of proof.
- 6.6.8. The *Appellant* shall then present his or her evidence.
- 6.6.9. Each *Party* will be allowed to cross-examine witnesses in the order determined by the *Adjudicator*.
- 6.6.10. Each *Party* may present rebuttal evidence.
- 6.6.11. Upon the conclusion of all testimony, the *Adjudicator* will inquire if the *Parties* are ready to submit the matter for decision.
- 6.6.12. The *Adjudicator* may on his or her own motion continue any hearing to another time and place, order additional evidence to be presented, or allow other evidence to be gathered and presented, as he or she deems proper.
- 6.6.13. The hearing will then be closed and the matter submitted to the *Adjudicator* for decision.
- a. At the *Adjudicator's* discretion, he or she may allow for the filing of supplemental evidence, and shall establish the time for filing and serving such evidence, and order that the matter be deemed submitted after such period. Copies of such supplemental evidence shall be served on the *Parties* who appeared at the hearing.
 - b. Following the hearing, the *Adjudicator* shall transmit in writing, to the *Parties* and City Clerk, his or her findings of fact, conclusions, and decision within thirty (30) working days after the matter was submitted for decision.
 - c. If the *Adjudicator* determines that the complexity of the case requires additional time in which to render a decision, he or she may extend the time

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in which to render the decision by another thirty (30) calendar days.

- d. Subject to Paragraph 6.8., Appeal of Adjudicator's Findings and Conclusions, the decision of the *Adjudicator* is final ten (10) calendar days from the transmittal of the decision to the City Clerk.

6.7. Determinations and Written Decision by the Adjudicator

- 6.7.1. At the conclusion of the hearing, the *Adjudicator* may: (1) uphold the denial, suspension, revocation, or other decision of the Chief of Police; or (2) allow that which has been denied, reinstate that which has been suspended or revoked, or reverse any other Chief of Police decision which is the subject of the appeal.
- 6.7.2. The *Adjudicator* shall determine all factual issues raised by the appeal.
- 6.7.3. The *Adjudicator* shall make findings of fact as to whether the proposed decision of the Chief of Police is supported by the evidence presented or existing in the official file.
- 6.7.4. The *Adjudicator* shall transmit in writing to the *Parties* his or her findings of fact, conclusions, and decision within thirty (30) working days after the matter was submitted for decision. If the *Adjudicator* determines that the complexity of the case requires additional time in which to render a decision, he or she may extend the time in which to render the decision by another thirty (30) calendar days. Notice of such extension shall be promptly served upon the *Parties*.
- 6.7.5. The *Adjudicator* shall mail the written decision to the *Appellant* by first-class mail, postage prepaid, and include a copy of the Certificate of Mailing with the written decision. The decision is final upon the date it is mailed. Notice of the written decision to any other *Party* shall also be by first-class mail, postage prepaid.

6.8. Appeal of Adjudicator's Findings and Conclusions

- 6.8.1. On the date the decision becomes final, an appeal of the *Adjudicator's* decision may be taken in accordance with the applicable procedures set forth in Chapter 3, Article 3, Division 5 of the San Diego Municipal Code, Council Policy 000-11, the local court rules, the California Rules of Court, and the California Code of Civil Procedure.

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APPENDIX

Legal References

Chapter 3, Article 3, Division 5 of the San Diego Municipal Code
Council Policy 000-11
City Charter sections 260 and 265
California Evidence Code sections 1271 and 1280
California Rules of Court
Part 2, Title 1 of the California Code of Civil Procedure

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