

CITY OF SAN DIEGO  
ADMINISTRATIVE REGULATION

SUBJECT  CONDUCT OF HEARINGS INVOLVING POLICE- REGULATED BUSINESSES	Number 10.10	Issue 3	Page 1 of 7
	Effective Date February 6, 1980		

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1. PURPOSE

The purpose of this regulation is to provide a procedure for expeditiously acting upon appeals from the decision of the Chief of Police with respect to denials, suspensions or revocations of police-regulated licenses or permits. When a hearing is required by law, the appellant will have notice of the hearing and an opportunity to appear before a City adjudicator to present the case.

2. SCOPE

This regulation applies to those individuals desiring to appeal decisions of the Chief of Police with regard to denials, suspensions, or revocations of police-regulated licenses or permits, and to those individuals directly involved in the appeal process.

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Authorized

(Signed by Ray W. Blair, Jr.)

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CITY MANAGER

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3. DEFINITIONS

In this regulation, unless the context or subject matter otherwise requires:

- a. “Appellant” means 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.
- b. “Party “ means any person disclosed by the records of the Police Department or the City Clerk to have an interest or possible interest in the subject mater of a hearing.
- c. “City Manager” means the City Manager of the City of San Diego or his designate.
- d. “Adjudicator” means a person appointed by the City Manager to hold a hearing.

4. PROCEDURE

4.1 SETTING THE MATTER FOR HEARING

Responsibility

Action

Appellant

- a. Files 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, to the City Manager pursuant to Chapter III, Article 3 of the San Diego Municipal Code.

City Manager

- b. Appoints an Adjudicator from a list of qualified hearing officers maintained by the City Manager, after receipt of notice of appeal.

Adjudicator appointment shall be made on a rotating basis. The Adjudicator shall not have been connected in any manner in the decision to take the proposed action which is the subject of the appeal.

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Responsibility

Action

Adjudicator

- c. Shall hold the hearing not less than five (5) but not more than thirty (30) days from the date of receipt of the notice of appeal by the City Manager.

The Adjudicator shall provide adequate 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 other parties.

4.2 DELIVERY OF NOTICE BY MAIL

Except as provided in Section 4.4, whenever the rules authorize delivery of any notice or paper by mail, 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 last known address. The delivery is complete at the time of the deposit.

4.3 RULES OF EVIDENCE APPLICABLE TO HEARINGS

- a. The hearing need not be conducted according to technical 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, and irrelevant and unduly repetitious evidence shall be excluded.
- b. 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 Appellant does not testify in his own behalf, the Appellant may be called and examined as if under cross-examination.

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- c. The Adjudicator may consider hearsay evidence as part of his 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 decision, the Adjudicator may consider arrests as evidence of unlawful activity if the frequency and nature of the arrests support this finding.
- d. Absentee licensees can be held accountable for the conduct of their employees or agents if notice of the complained of conduct has been provided to the licensee prior to its occurrence.
- e. Licenses may be suspended or revoked at all licensed establishments of a licensee when it is shown that a pattern of unlawful activity is occurring at fewer than all licensed establishments and the licensee does not or is unable to control the unlawful activities.
- f. Oral evidence shall be taken only on oath or affirmation.
- g. The hearing shall be conducted in the English language. The proponent of any 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.

4.4 REPRESENTATION BY COUNSEL

Any Appellant or party shall be entitled to be represented by legal counsel at any hearing before the Adjudicator. After an attorney appears at a hearing on behalf of an applicant or party, or after the filing of written notice that the attorney is appearing on behalf of the applicant or party, all notices shall thereafter be served upon such counsel.

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4.5 CONDUCT OF HEARINGS

Hearings held by the Adjudicator will be conducted according to the following format:

- a. 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.
- b. 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:
  - (1) The notice of appeal of Appellant.
  - (2) The notice to the Appellant of the date set for hearing, with proof of service.
  - (3) All reports and materials upon which the Chief of Police relied in taking his proposed administrative action. Copies of all such reports and materials shall have previously been supplied to Appellant, his representative, or other interested parties.
  - (4) All reports and materials 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 shall have been previously supplied to the Chief of Police or other interested parties.
  - (5) Other documents in the official file.
- c. All testimony before the Adjudicator shall be under oath or affirmation administered by the Adjudicator.
- d. The person representing the Chief of Police shall present any evidence and shall have the burden of proof.
- e. The person filing the appeal shall present his evidence.
- f. Each other party shall then present his evidence in the order determined by the Adjudicator.

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- g. Each party will be allowed to cross-examine witnesses in the order determined by the Adjudicator.
- h. Each party may present rebuttal evidence.
- i. Upon the conclusion of all testimony, the Adjudicator will inquire if all parties are ready to submit the matter for decision.
- j. The Adjudicator may on his 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 in his determination a proper presentation of the case requires
- k. The hearing will then be closed and the matter submitted to the Adjudicator for decision.
  - (1) If further documentary evidence is to be filed, the Adjudicator may allow time for filing and serving such documentary evidence, and order that the matter be deemed submitted after such period unless any party objects to such documentary evidence within ten (10) days after it is filed. Copies of such documentary evidence shall be served on all parties who appeared at the hearing. Following the hearing the Adjudicator shall transmit in writing to the parties and City Clerk, his findings of fact, conclusions, and decision within five (5) working days after the matter was submitted for decision.
- l. At the conclusion of the hearing, the Adjudicator may uphold the denial, suspension, revocation or other decision of the Chief of Police; or the Adjudicator may 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. Subject to Section 4.7, APPEAL OF ADJUDICATOR'S FINDINGS AND CONCLUSIONS, the decision of the Adjudicator is final ten (10) days from the transmittal of the decision to the City Clerk.

4.6 DETERMINATIONS BY THE ADJUDICATOR

- a. The Adjudicator shall determine all factual issues raised by the appeal

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- b. Where a hearing is held by the Adjudicator, 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.

4.7 APPEAL OF ADJUDICATOR’S FINDINGS AND CONCLUSION

Within ten (10) days after a written decision of the Adjudicator has been received by the parties to the hearing, an appeal may be filed with the City Clerk requesting the Public Services & Safety Committee to review the Adjudicator’s decision in accordance with Section 33.0502 of the San Diego Municipal Code and Council Policy 000-11.

4.8 REGULATION FURNISHED TO APPELLANT

A copy of this regulation shall be furnished to the Appellant and to any party at any time upon request.

5. APPENDIX

Legal References

Chapter III, Article 3 of the San Diego Municipal Code  
Council Policy 000-11

Subject Index

Appeals, Hearings, Police-Regulated Business