

COUNCIL POLICY

CURRENT

SUBJECT: APPEALS FROM DECISIONS OF THE POLICE CHIEF RELATIVE TO POLICE-REGULATED BUSINESSES
POLICY NO.: 000-11
EFFECTIVE DATE: December 10, 1979

BACKGROUND:

Chapter III of the San Diego Municipal Code designates a number of occupations and businesses as “Police Regulated.” As such, the Chief of Police is given the authority to approve, deny, suspend, or revoke working permits or business licenses for such police-regulated concerns. Due process of law requires persons so affected a right of appeal.

PURPOSE:

To provide a standardized procedure for appeals from decisions of the Chief of Police relative to police-regulated businesses and occupations in the absence of specific statutory or Municipal Code provisions therefor.

DEFINITIONS:

For purposes of this policy:

“Appellant” means any person or organization seeking review of a decision of the Chief of Police or the Hearing Officer.

“Hearing Officer” means any person or organization designated by the City Manager to review decisions of the Chief of Police relative to police-regulated businesses or occupations.

“Licensees” means any person or organization licensed to conduct business pursuant to the San Diego Municipal Code.

POLICY:

It is the policy of the City that all appeals from decisions of the Chief of Police relating to police-regulated businesses shall be heard by a hearing officer and follow due process of law in accordance with the following procedures.

PROCEDURE PRIOR TO HEARING BY A HEARING OFFICER

1. Within ten (10) days of written notice of a decision by the Chief of Police to revoke or suspend a license, that individual may appeal the Police Department’s decision to a hearing officer by filing a petition to that effect with the City Manager.
2. The effect of a decision of the Chief of Police shall be stayed while an appeal to a hearing officer is pending, or until the time for filing such appeal has expired.

PROCEDURE BY HEARING OFFICER

1. Hearings heard by a hearing officer shall be conducted with recognition of constitutional rights of due process of law including proper notice, the right to appear at the hearing personally or with representation, the right to present evidence, the right to confront and examine witnesses, and the right to have written findings and conclusions.
2. The hearing officer 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.
3. The hearing officer may also consider arrests without conviction as part of his determination; however, only under unusual circumstances should such arrests be the sole finding upon which an appellant's license is revoked or suspended.
4. All licensees, including absentee licensees, can be held accountable for the conduct of their employees or agents if notice of the employee's conduct has been provided to the licensee prior to its recurrence.
5. 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 from occurring.
6. The hearing officer shall notify the appellant of his findings and decision, in writing, no later than ten (10) days after reaching his decision.

PROCEDURE SUBSEQUENT TO HEARING OFFICER HEARING (AND PUBLIC SERVICES SAFETY COMMITTEE REVIEW, IF APPLICABLE)

1. Within ten (10) days after a written decision of the hearing has been received by the parties to the hearing, an appeal may be filed with the City Clerk requesting the Public Services and Safety Committee to review the hearing officer's decision in accordance with Section 33.0502 of the San Diego Municipal Code.
2. If an appeal is filed, the Committee Consultant shall cause the matter to be set for review before the Public Services and Safety Committee on a regular agenda within twenty-one (21) days after such notification. The Committee Consultant shall notify the appellant, the Chief of Police, and the City Manager, of the date, time, and place at least seven (7) days in advance of such review.
3. After the City Manager has been notified that an appeal of a hearing officer's decision has been filed, he shall cause a copy of the hearing officer's written report to be issued to members of the City Council at least three (3) days prior to the date set for review by the Committee.

4. If at least three (3) members of the Committee vote in favor of hearing the appeal, the Consultant to the Committee shall set the appeal for hearing at the Committee within 21 days.
5. The appellant may submit, in writing, his own statement of facts and any other relevant information he may desire to bring before the Public Services and Safety Committee to the Committee Consultant and City Attorney at least three (3) days prior to the date of the Committee hearing.
6. The decision of the hearing officer shall be stayed while an appeal to the Public Services and Safety Committee is pending, or until the time for filing such an appeal has expired.
7. If an appellant does not utilize the aforementioned appeal process within the specified time period, the decision of the hearing officer shall be the final administrative remedy.
8. If the Public Services and Safety Committee does hear an appeal, the decision of the Committee shall be the final administrative remedy, subject to the permanent rules of the Council.

PROCEDURE AT COUNCIL AND COMMITTEE HEARINGS

1. The Council or Committee hearing shall be to determine whether an appellant has been afforded due process of law by the hearing officer and to review if the findings and conclusions have been supported by substantial evidence.
2. The City Attorney shall briefly state the positions of the appellant and the department and the issues for decision by the Council or Committee.
3. Witnesses shall not be heard or other evidence received unless the Council or Committee determines that such witnesses or other evidence were unknown or undiscoverable in the exercise of due diligence at the time of the hearing officer's hearing.
4. The appellant shall present his case to the Council or Committee. The department shall then present its case after which the appellant shall be afforded an opportunity for rebuttal.
5. The Council or Committee may at any stage of the proceedings direct questions to the appellant or the department. It may also summon witnesses or call for other evidence and continue the hearing to a later time.
6. After the presentation by the appellant and the department, the Council or Committee shall, upon motion, close the hearing and make its decision on the appeal. Three (3) affirmative votes of a Council Committee and five (5) votes of the full Council are required to reverse or modify the decision of a hearing officer.

PROCEDURE FOLLOWING COUNCIL AND COMMITTEE HEARINGS

1. The Committee Consultant shall notify the appellant, in writing, of the findings and decision of the Committee no later than ten (10) days after the Committee hearing.

HISTORY:

Adopted by Resolution R-188094 08/18/1966
Amended by Resolution R-195660 01/02/1969
Amended by Resolution R-250800 12/10/1970