

CITY OF SACRAMENTO

CANNABIS ADMINISTRATIVE PENALTY APPEAL HEARING

RULES OF PROCEDURE

ADOPTED BY HEARING EXAMINER EDITH AWUAH ON

July 18, 2019

Hearing Examiner
City of Sacramento
c/o Office of Cannabis Policy and Enforcement
915 I Street, 2nd Floor
Sacramento, California 95814
(916) 808-8955

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B. Wherever in these Rules it is required that something is to be served upon the City, the documents must be served as follows:

Electronic Mail: Not available. Call the office to get the contact information for the attorney assigned to the matter.

Regular Mail or Delivery: City Attorney Office
or Delivery Attn: Cannabis Code Enforcement
City of Sacramento
915 I Street, 4th Floor
Sacramento CA 95814

Facsimile: (916) 808-7455
Telephone: (916) 808-5364

1.06 REPRESENTATION

A. Parties may represent themselves or be represented by any person of their choice. (SCC § 1.28.010.D.4.vi.(A).)

B. If the appellant decides to be represented by an attorney, the appellant should contact the attorney as soon as possible, at least several weeks in advance of the hearing, so they will have ample time to prepare the case. When an appellant is represented by an attorney, the attorney shall file a notice of appearance with the hearing examiner and serve a copy of the notice on the City at the earliest possible time in the proceedings. Once the hearing examiner is notified that the appellant is represented by an attorney, hearing and other notices will be sent to both the appellant and the attorney.

C. The appellant may request that an individual or firm (other than an attorney) be formally recognized as its representative through a notarized document submitted to the hearing examiner and served on the City prior to the hearing. After filing the request, hearing and other notices will be sent only to the representative. The representative shall have the same rights as the appellant and the appellant shall be bound by the statements made by its representative.

SECTION 2: FILING AN APPEAL

2.01 NOTICE OF APPEAL

A. Any responsible party upon whom an administrative penalty has been imposed may appeal the administrative penalty. "Responsible party" means any person, business, company or entity, and the parent or legal guardian of any person under the age of 18 years, who has done any act for which an administrative penalty may be imposed. (SCC §§ 1.28.010.C.4, 1.28.010.D.4.a.)

B. An administrative penalty can be appealed by filing a written notice of appeal within 20 calendar days of the personal service of the administrative penalty order, or within 25 calendar days of the mailed service of the administrative penalty order. (SCC § 1.28.010.D.4.a, Cal. Code Civ. Proc. §1013(a).) An appellant will be denied a hearing if they fail to file a notice of appeal by this deadline without good cause as determined by the hearing examiner.

C. A notice of appeal must be in writing and contain the following:

1. Identification of the matter being appealed, including the number of the Administrative Penalty, the appellant's name, and the property address;
2. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
3. A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his, her or its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and
4. An address at which the appellant agrees notice of the date of the hearing and any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail. (SCC § 1.28.010.D.4.a.)

D. The notice of appeal is to be filed with the City Clerk's Office, 5th floor of New City Hall, after payment of the appeal fee. The City Clerk's office can be reached at (916) 808-7200.

E. An appellant is not limited by the brief statement in the notice of appeal with regard to the scope of evidence that may be introduced at the hearing to support his, her or its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted.

2.02 APPEAL FEE

Any responsible party appealing the imposition of an administrative penalty is required to pay an appeal fee at the time the written notice of appeal is filed. The appeal fee is to be paid at the Revenue Division office, 1st floor of New City Hall, and this office can be reached at (916) 808-5527 weekdays between 9:00 a.m. to 4:30 p.m. The amount of the appeal fee is as follows:

- A. For violations of sections 8.132.030 or 8.132.040, the appeal fee is \$250.
- B. For any other violation of chapter 8.132, Cultivation of Cannabis, or any other SCC chapter related to imposition of administrative penalty for cannabis related matters, the appeal fee is determined by the level of violation:
 1. Level A violation: \$500
 2. Level B violation: \$250
 3. Level C violation: \$100
 4. Level D violation: \$ 50(SCC §§ 1.28.010.D.4.b, 8.132.050.E.2.)

2.03 SETTING AN ADMINISTRATIVE APPEAL HEARING

A. Upon receipt of timely appeal, the administrative penalty appeal hearing date shall be set by the hearing examiner. The hearing shall be held no sooner than 20 days after the notice of appeal is filed. (SCC § 1.28.010.D.4.d.) The hearings are usually held on the first and third Thursday of each month, except for holidays.

B. The hearing examiner shall send notice of the appeal hearing to the appellant by first class mail at the address provided with the written notice of appeal. Notice of the appeal hearing shall be mailed to the appellant at least 15 days before the hearing date. (SCC § 1.28.010.D.4.d.)

C. The notice of appeal hearing contains the date, time and location of the hearing, and other important information.

SECTION 3: DISCLOSURE OF EVIDENCE; SUBPOENAS; CONTINUANCES

3.01 DISCLOSURE OF EVIDENCE TO BE ENTERED INTO THE RECORD

Copies of all evidence (including exhibits and briefs) to be entered into the record of the appeal hearing must be filed with the hearing examiner and served on the City no later than five (5) business days prior to the hearing date during regular business hours (8 am to 5 pm) pursuant to Rule 1.05. Documents filed later than this time period may only be considered if the hearing examiner grants an exception to these Rules based on good cause.

3.02 SUBPOENAS

A. The hearing examiner has the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties. (SCC § 1.28.010.D.4.e.viii.(D).)

B. A request for a subpoena or a subpoena duces tecum must be filed with the hearing examiner and served on the opposing party at least 20 days before the scheduled hearing. The hearing may need to be continued if the person can't appear or the documents can't be produced by the hearing date.

C. The request a subpoena or a subpoena duces tecum shall include, at a minimum, the name and address of the person upon whom it will be served, the scope of the requested order, and the reasonable necessity of the subpoena.

3.03 CONTINUANCES

A. Once the hearing has been set for a specific date, the hearing examiner may, upon request of the appellant or the City, or upon his or her own motion, grant continuances from

time to time for good cause shown or by mutual agreement of the parties. (SCC § 1.28.010.D.4.e.iii.)

B. Good cause for the request for a continuance includes military service, imprisonment, pending criminal hearing for the same violation, illness, or other unforeseen circumstance preventing the appearance of the appellant, his or her attorney or representative, City staff, or a material witness. Mere inconvenience, avoidable scheduling conflicts, or difficulty in appearing shall not constitute “good cause.” Since this is an administrative matter for which an attorney is not required, a continuance will not be granted based solely on an attorney’s scheduling conflict with another client’s matter; in such cases, the attorney should either withdraw from the case, or arrange for another attorney or paralegal to attend the scheduled appeal hearing and represent the appellant.

C. A request for a continuance that is contested by the opposing party shall be made in writing with supporting documentation attached and shall be filed with the hearing examiner and served on the opposing party, no later than five (5) business days prior to the hearing, unless the hearing examiner grants an exception to these Rules based on good cause.

D. The hearing examiner shall weigh the request, the opposition (if any), the number of circumstances of previous continuances (if any), and any other relevant information, to determine whether good cause is shown.

E. If a continuance is granted, the hearing examiner shall provide notice of the date, time, and place of the continued hearing to each party.

SECTION 4: APPEAL HEARING

4.01 GENERALLY

A. At the time set for the administrative penalty appeal hearing, the hearing examiner shall proceed to hear testimony from the City representative, the appellant, and any other competent persons with respect to the facts that support or undermine the imposition of an administrative penalty. (SCC § 1.28.010.D.4.e.i.)

B. The hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party’s efforts to prevent or correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of city staff time which was expended investigating and addressing the violation. (SCC § 1.28.010.D.4.f.i.)

C. The hearing examiner has no power to declare an ordinance unenforceable or unconstitutional. No evidence or argument addressing issues beyond the hearing examiner’s authority or scope of the hearing shall be presented or argued at the hearing. However, any

such evidence or argument may be preserved for the record by submitting it in writing no later than five (5) business days prior to the hearing. The hearing examiner shall not consider such submissions in reaching his or her decision.

4.02 BURDEN AND STANDARD OF PROOF

- A. The City shall have the burden of proof in establishing, by a preponderance of the evidence, that the appellant has committed or caused the alleged violation(s) of the Sacramento City Code.

- B. The appellant shall have the burden of proof in establishing, by a preponderance of the evidence, any affirmative defense(s) offered in response to the alleged violation.

- C. “Preponderance of the evidence” means that, based on the evidence presented in the hearing, what he or she is required to prove is more likely to be true than not true. (CACI No. 200.)

4.03 HEARING FORMAT

- A. Administrative penalty appeal hearings, while informal proceedings, shall have a structured format to promote due process, fairness, efficiency, and the orderly presentation of evidence and argument.

- B. The order of presentation at the hearing shall be the following:
 - 1. Oath or affirmation;
 - 2. Hearing examiner's introductory statement;
 - 3. Parties' opening statements (optional);
 - 4. City's presentation of evidence;
 - 5. Appellant's presentation of evidence; and
 - 6. Parties' closing arguments (optional).

- C. Notwithstanding subdivision B above, the hearing examiner may modify the order of presentation to promote the clear and fair presentation of relevant evidence.

- D. Once the hearing is concluded, no new evidence may be provided to the hearing examiner unless the hearing examiner agrees to leave the record open for the submission of additional evidence and the opportunity for each party to support or rebut the new evidence. If the hearing examiner leaves the record open, the case is deemed submitted after the last written argument is received by the hearing examiner.

- E. The hearing examiner may deny the appeal and uphold imposition of the administrative penalty where, without good cause, neither the appellant nor its attorney or representative appeared at the hearing. The hearing examiner will consider the information in the notice of appeal and all other evidence timely submitted in rendering his or her decision.

4.04 TESTIMONY AND EVIDENCE

A. The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. (SCC § 1.28.010.D.4.e.v., Cal. Gov. Code § 11513.)

B. Each party shall have these rights:

1. To call and examine witnesses;
2. To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
3. To impeach any witness regardless of which party first called him or her to testify; and
4. To rebut the evidence.

If appellant does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination. (Cal. Gov. Code § 11513(b).)

C. Oral evidence shall be taken only on oath or affirmation administered by the hearing secretary on behalf of the hearing examiner. (Cal. Gov. Code § 11513(a), SCC § 1.28.010.D.4.e.iv.)

D. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (Cal. Gov. Code § 11513(c).)

E. Hearsay evidence may be used for the purpose of supplementing or explaining any other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before conclusion of the hearing for that matter. (Cal. Gov. Code § 11513(d).)

F. The rules of privilege apply to the extent they are otherwise required by statute to be recognized at the hearing. (Cal. Gov. Code § 11513(e).)

G. The hearing examiner has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Cal. Gov. Code § 11513(f).)

4.05 INTERPRETERS

A. If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at that party's own cost, to translate for the party. (SCC § 1.28.010.D.4.e.vi.(B).) Failure to make arrangements to have an interpreter present is not good cause for a continuance.

B. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing. (SCC § 1.28.010.D.4.e.vi.(B).) In the alternative, the hearing examiner has

the discretion to allow an interpreter who takes an oath that, to the best of the interpreter's ability, a true interpretation will be made that is understandable for the person utilizing the interpreter, and that the interpreter will repeat statements verbatim in English to the hearing examiner and the other parties.

4.06 OFFICIAL NOTICE

The hearing examiner may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county, or any of their departments. (SCC § 1.28.010.D.4.e.vii.)

4.07 INSPECTION OF PREMISES

A. In the case of a violation related to real property in the city, the hearing examiner may inspect the property prior to, during, or after the hearing, provided that:

1. Notice of the inspection shall be given to the parties before the inspection is made;
2. The parties consent and are given an opportunity to be present during the inspection; and
3. Upon completion of the inspection, the hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom. (SCC § 1.28.101.D.4.iii.)

B. Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record. (SCC § 1.28.101.D.4.iii.)

C. Notice to the parties and the owner's consent to inspect the property are not required if the property can be inspected from areas to which the general public has access or with permission of other persons authorized to provide access to the property and/or buildings located on the property. (SCC § 1.28.101.D.4.iii.)

4.08 RECORDING

A. All proceedings before the hearing examiner are electronically recorded. The recordings of hearings are part of the official administrative record. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense. (SCC § 1.28.010.D.4.e.ii.) However, the proceedings shall not be delayed or impeded to accommodate a shorthand reporter.

B. Except as provided in subsection A, all other photographic and recording equipment is prohibited at hearings without the prior approval of the hearing examiner. The hearing examiner may deny or condition use of such equipment as he or she deems necessary to avoid disruption to the proceedings or prejudice to any party.

SECTION 5: HEARING EXAMINER'S DECISION

5.01 ISSUANCE OF DECISION

The written decision of the hearing examiner shall be issued within 30 days of the hearing, unless there are circumstances beyond the control of the hearing examiner that delays issuance. (SCC § 1.28.010.D.4.f.ii.) Upon issuance of the decision, the hearing examiner shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served two days after the date it is mailed to the address provided by the appellant. (SCC § 1.28.010.D.4.f.iii.)

5.02 CONTENTS OF THE DECISION

A. The hearing examiner may affirm the administrative penalty imposed by the City, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. The hearing examiner shall have the discretion to impose a lower, but not a higher, level of violation and/or penalty amount. (SCC § 1.28.010.D.4.f.i.)

B. The hearing examiner's decision shall contain the following:

1. A summary of the relevant evidence presented;
2. Rulings on any procedural matters, including any prior rulings relevant to the case, such as contested continuances, and objections to the evidence submitted either before or at the hearing;
3. Findings of fact, based upon all the evidence submitted and presented at hearing and
4. A determination of any legal issues presented, based upon the findings of fact and applicable law.

C. If the hearing examiner upholds imposition of an administrative penalty, the decision shall require the administrative penalty to be paid within 25 calendar days of the date of service of the decision. The decision shall inform the appellant that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the appellant; and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected. (SCC § 1.28.010.D.4.f.ii.)

D. The hearing examiner's decision shall also inform the appellant that any judicial review of the hearing examiner's decision shall be pursuant to sections 1094.5 and 1094.6 of the California Code of Civil Procedure and section 53069.4 of the California Government Code. (SCC § 1.28.010.D.4.f.ii.)

SECTION 6: JUDICIAL REVIEW

6.01 REVIEW OF THE HEARING EXAMINER'S DECISION

Any judicial action taken to set aside, annul or vacate the decision of the hearing examiner shall be filed in the manner and within the time provided in sections 1094.5 and 1094.6 of the California Code of Civil Procedure (no later than the 90th day following the date of the decision) and section 53069.4 of California Government Code (no later than the 20th day following the date of service the decision). (SCC § 1.28.010.D.4.f.iv.)

6.02 CERTIFIED RECORD OF PROCEEDINGS

- A. Anyone desiring a certified transcript of a hearing shall submit a written request to the City Clerk and submit payment to the City Clerk for the transcript requested.

- B. Anyone desiring a full certified administrative record of the hearing shall submit a written request to the City Clerk and submit payment to the City Clerk for the record requested.

- C. The administrative record shall include all documents submitted with the notice of appeal, prehearing submissions, evidence and testimony presented at the hearing, the hearing examiner's record of decision, and the transcript of the hearing.