



# CITY OF STOCKTON

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## OFFICE OF THE CITY ATTORNEY

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## **POLICIES GOVERNING ADMINISTRATIVE HEARINGS UNDER CHAPTER 1.44 OF THE STOCKTON MUNICIPAL CODE**

### **I. AUTHORITY AND PURPOSE**

Under Chapter 1.44 of the Stockton Municipal Code, the City Attorney shall promulgate rules and procedures as are necessary to establish a pool of qualified persons who are capable of acting on behalf of the City as Hearing Officers (SMC 1.44.020); shall develop policies and procedures relating to the appointment and compensation of Hearing Officers (SMC 1.44.030); shall promulgate rules and procedures for the disqualification of a Hearing Officer (SMC 1.44.040); shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs (SMC 1.44.050(b)); shall appoint a Hearing Officer and to schedule a day, time and place for the hearing (SMC 1.44.080); shall promulgate procedures concerning the process and format of administrative hearings (SMC 1.44.090); and, promulgate procedures concerning issuance of a written administrative order (SMC 1.44.110).

The purpose of these written policies is to put into effect an established system governing the administrative hearings process within the City of Stockton pursuant to SMC Chapter 1.44. The City Attorney reserves the right to amend these policies as necessary for consistency of process and adherence to law.

### **II. RECRUITMENT, QUALIFICATIONS AND APPOINTMENT OF HEARING OFFICERS**

#### Recruitment

The City Attorney shall, in his/her discretion from time to time, solicit applicants for the position of Hearing Officer. During any period of recruitment, a solicitation must be sent to the San Joaquin County Bar Association. Any such solicitation shall include a copy of, or a link to, these policies.

#### Qualifications

A Hearing Officer shall be an attorney admitted to practice before the courts of the State for at least five (5) years prior to appointment, be in good standing with the State Bar, and have no record of professional discipline with the State Bar. Ideal candidates will be an attorney admitted to practice before the courts of the State for at least ten (10) years prior to appointment, be in good standing with the State Bar, have no record of professional discipline with the State Bar, and be familiar with municipal law, rules of evidence, civil trial, and administrative hearing procedures.

Prior to serving as a Hearing Officer, the Hearing Officers are encouraged to complete "Introduction to Judicial Ethics for Temporary Judges" provided by the Judicial Council of California with their submittal to become a Hearings Officer. The training is found here:

<http://www2.courtinfo.ca.gov/protem/courses/je/>

A Hearing Officer shall not be qualified if:

(a) they or their law firm served as retained legal counsel for the City in other matters which concluded less than five (5) years immediately preceding their appointment;

(b) they or their law firm participated in a lawsuit for money damages or equitable relief against the City where the lawsuit was resolved less than five (5) years immediately preceding their appointment; or,

(c) they were employed by the City within the six (6) months immediately preceding their appointment.

The City will consider non-attorney applicants for Hearing Officers if the applicant can demonstrate via their submittal that they possess the requisite knowledge, skills, and experience necessary to fairly and impartially adjudicate disputes between parties and that they have sufficient background experience in municipal issues, weighing of evidence, and administrative hearing procedures.

#### Appointment

To be considered for appointment, an applicant must submit their resume or curriculum vitae (CV) and, if an attorney, proof of standing with the State Bar. Non-attorney applicants for Hearing Officer must also submit documentation of their proficiency, training, or education in a particular municipal field which they believe qualifies them to serve as a Hearing Officer. Attorney applicants may, but are not required to, provide a writing sample no more than 15 pages which is representative of their ability to exercise sound legal judgment. Non-attorney applicants must submit the above writing sample. The materials must be submitted in response to the recruitment posted by the City Attorney

Each applicant to the position of Hearing Officer shall submit proof of qualifications to the City Attorney and the discretion to approve or not approve an applicant to be a Hearing Officer resides in the City Attorney. Selected qualified applicants shall be appointed to a panel of Hearing Officers maintained by the City Clerk's Office.

### **III. COMPENSATION OF HEARING OFFICERS**

All Hearing Officers shall be compensated at the same rate, that rate being determined by the City Attorney. The maximum allowable compensation to be provided to a Hearing Officer to discharge their duties in any single matter shall not exceed \$5,000.00.

Upon the conclusion of a matter and the issuance of a written administrative order, the Hearing Officer must provide under penalty of perjury a verified accounting of their time spent in order to be compensated. Travel expenses shall not be reimbursable.

Funding to compensate the Hearing Officer shall be borne by the Department whose decision, finding, or order is being appealed and is the subject of the proceeding.

#### **IV. TERM OF HEARING OFFICER**

A Hearing Officer shall serve for three (3) years from appointment. If a Hearing Officer is in the process of hearing a matter when their term expires then that Hearing Officer shall continue to hear that matter until it is complete. A Hearing Officer may apply for re-appointment to an additional term during the final six (6) months of an existing term. Re-appointment shall be at the sole discretion of the City Attorney.

#### **V. INDEPENDENT AUTHORITY OF HEARING OFFICERS**

Hearing Officers act as a judge to hear and rule on cases involving appeals between citizens of Stockton and the City's various departments. The employment, performance evaluation, compensation, and benefits of a Hearing Officer shall not be directly or indirectly conditioned upon the outcome of hearings conducted. Hearing Officers are intended to be independent, unbiased, fair, and impartial towards all parties to the administrative hearing. Hearing Officers are not employees of the City, nor are they a partner, agent, or joint venturer of the City. Hearing Officers are not entitled to and shall not obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees.

#### **VI. DISCLOSURE AND DISQUALIFICATION**

Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Upon the commencement of the hearing or any time before, any party may raise objections to the Hearing Officer for the record and ask that the Hearing Officer disqualify themselves. A party must allege facts that demonstrate the challenged Hearing Officer is contaminated with bias or prejudice. Bias and prejudice are never implied and must be established by clear averments. A party's unilateral perception of an appearance of bias is not itself ground for disqualification.

Any party that does not timely object and/or request disqualification on the grounds of bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law, is deemed to have waived any such objection. The time to object or move to disqualify a Hearing Officer expires when any party to the proceeding begins the presentation of the merits (i.e., opening statements) of their case before the Hearing Officer.

A Hearing Officer shall disqualify themselves from serving as Hearing Officer in a particular matter where they have a conflict of interest within the meaning of the Political Reform Act (section 87100 et seq. of the Government Code) and shall otherwise comply with the disqualification provisions of the California Code of Judicial Ethics, including but not limited to, Canon 3.E.

[https://www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](https://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf)

#### **VII. REMOVAL AND/OR REVOCATION OF HEARING OFFICER FROM PANEL**

Prior to the expiration of their term, a Hearing Officer may be removed from the Hearing Officer Panel as follows:

(a) Hearing Officers may be terminated at any time without cause and their tenure from the panel deemed terminated.

(b) A Hearing Officer may be terminated by the City at any time for cause, including but not limited to failure to discharge their duties timely or competently; failure to disqualify themselves from presiding over a matter when these rules or other applicable law required it; engaging in rude, disparaging, obscene or otherwise inappropriate decorum towards any party during a hearing.

(c) If a Hearing Officer is disbarred, suspended, or put on involuntary inactive status by the California State Bar, or resigns membership to the California State Bar, then the Hearing Officer's appointment will be automatically revoked.

(d) A Hearing Officer shall be removed by the City if, while they are currently an active member of the City's Hearing Officer Panel, they or their law firm are retained as legal counsel for the City in other matters; if they or their law firm file a claim or lawsuit for money damages or equitable relief against the City; or if they are hired as a City employee.

(e) If a Hearing Officer is removed, or their appointment automatically revoked, then any matter currently assigned to that Hearing Officer shall be reassigned to another Hearing Officer pursuant to the rotation system governing assignment of matters.

(f) A Hearing Officer shall receive notification upon their removal by written, mailed notice to the address provided by the Hearing Officer to the City.

#### **VIII. SELECTION OF HEARING OFFICER**

Where a party appeals an action by the City in writing pursuant to Chapter 1.44 of the SMC, and pays the administrative appeal fee, a Hearing Officer shall be selected pursuant to a rotation system. If the selected Hearing Officer is unable to serve or is disqualified, then the next Hearing Officer due to preside over a hearing based on the rotation from the panel of Hearing Officers shall be appointed. At no time shall any party, including the City, have the authority or discretion to select any particular hearing officer for a particular administrative hearing.

The City will make reasonable attempts to maintain a panel that consists of multiple Hearing Officers at any given time. If for any reason the City is unable to locate a Hearing Officer from the available panel to conduct a hearing within a reasonable amount of time from the date a party requests an appeal, the City may contract with someone outside of the panel of Hearing Officers who has the proper qualifications and expertise necessary to effectively conduct the hearing. This individual shall have the same authority as and be subject to the same rules and regulations as a Hearing Officer from the panel.

#### **IX. SCHEDULING AND CALENDARING OF ADMINISTRATIVE HEARINGS**

It shall be the responsibility of the department issuing the notice or taking the action which is the subject of the appeal to determine when a hearing is required and to notify the City Attorney. The City Attorney shall select a Hearing Officer and select a hearing date as soon as reasonable so as to allow for proper notice to all involved parties. The department shall be responsible for reserving a hearing room and sending appropriate notice to all parties.

Hearings shall be conducted in person at the Council Chambers located at Stockton City Hall, 425 N. El Dorado Street, 2<sup>nd</sup> Floor, Stockton CA 95202. Scheduling of the Council Chambers and calendaring of the administrative hearing will be performed by City staff. Communications that pertain to the scheduling and calendaring of the hearing between representatives of the City with the Hearing Officer is acceptable.

Upon the written stipulation and consent of all parties and the Hearing Officer, a hearing can be conducted at a mutually agreed location within the City of Stockton or County of San Joaquin. If the location is moved, it is incumbent upon the Hearing Officer to then provide the requisite equipment necessary to ensure the hearing will be properly audio recorded and that all procedures governing the process of the hearing can be followed. The City will not provide any extra equipment for this purpose. If not all parties consent or these procedures cannot be followed at the location, the hearing must take place at the Council Chambers.

Upon the stipulation and consent of all parties and the Hearing Officer, a hearing may be conducted via video-teleconferencing (e.g., Zoom). All parties must utilize a laptop and/or desktop computer with a serviceable webcam to facilitate the hearing via video teleconference and have an uninterrupted connection to high-speed internet. If utilizing video-teleconferencing to conduct the administrative hearing, it is incumbent upon the Hearing Officer to then provide the requisite equipment necessary to ensure the hearing will be properly audio recorded and that all procedures governing the process of the hearing can be followed. The City will not provide any extra equipment for this purpose. If utilizing video-teleconferencing to conduct the administrative hearing, it is incumbent upon the parties to secure the remote attendance of their witnesses. If not all parties consent to the hearing via video-teleconference or these procedures cannot be followed while utilizing video-teleconference, the hearing must take place at the Council Chambers.

## **X. NOTICE ADMINISTRATIVE HEARING**

Upon the scheduling and calendaring of the administrative hearing, the City shall give notice of the hearing date, time, and location to all parties to the hearing by any one of the methods listed in Section 1.04.080 of the Municipal Code at least 10 days before the hearing date. Electronic service of the notice is acceptable if a party is represented by counsel. (See e.g., Code Civ. Proc., § 1010.6(e).)

## **XI. ADMINISTRATIVE HEARING PROCEDURES**

In addition to the procedures described in SMC 1.44 et seq., Hearing Officers assigned to conduct administrative hearings conducted by the City of Stockton shall adhere to the following general rules and format governing the administrative hearings process.

(a) Failure to Appear: Failure to appear at the hearing shall constitute a waiver to present evidence or argument in support of that party's position, a waiver of any right to object to the decision of the Hearing Officer, and the decision or order that was the subject of the appeal shall be summarily affirmed.

(b) Representation of Parties: During the hearing the parties may be represented by counsel or another representative of the party's choice. Appellants are encouraged to personally attend the hearing as opposed to only sending a representative to appear on their behalf.

(c) Subpoenas: The Hearing Officer shall issue subpoenas for the attendance of witnesses and the production of documents pursuant to SMC 1.44.050(B). Compliance with section 1985 et seq. of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena. Any amount required to be paid to witnesses appearing pursuant to a subpoena under section 1985 et seq. shall be borne by the party at whose request the witness was subpoenaed.

(d) Witnesses: Each party shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness, and to rebut evidence. It is recommended that three (3) copies of any exhibits intended to be introduced at the hearing be provided (1 for the submitting party, 1 for other party, 1 for the Hearing Officer).

(e) Oath/Affirmation: In any proceeding before the Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation administered by the Hearing Officer. The witness, or witnesses together, shall be asked to raise their right hand and to swear, or at their election affirm, that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.

(f) Evidence: The technical rules relating to evidence, including but not limited to the California Evidence Code or the Federal Rules of Evidence, will not apply during the hearing. The Hearing Officer may allow any relevant evidence to be admitted. The Hearing Officer may reject any evidence they deem to be unreliable, irrelevant, or unduly repetitious. The Hearing Officer shall not consider any oral or documentary evidence presented to them outside of the hearing unless the parties stipulate in writing to such evidence and the stipulation is made part of the hearing record.

(g) Inspection: The Hearing Officer may inspect any subject premises provided that they (1) give reasonable notice to the parties of the date and time of the inspection, (2) the parties are given an opportunity to be present during the inspection, (3) the Hearing Officer states on the record any material facts observed and their conclusions drawn therefrom, and (4) allows each party the right to rebut or explain any of the Hearing Officer's observations and conclusions.

(h) Briefs: Briefs are not required; however, any party may elect to submit a brief concerning the subject of the administrative hearing. The Hearing Officer may also request that the parties to the appeal submit written briefs or statements of their position prior to the hearing. Any such briefs or statements of position shall be provided to the Hearing Officer and all parties. Briefs shall not exceed 15 pages, but exhibits, evidence or other attachments to the brief may. Amicus briefs are not permitted.

(i) Order of Proceeding: The Hearing Officer should follow this order of proceeding in each hearing. The Hearing Officer may vary this order if they determine circumstances exist which justify the variance:

(1) Announce the beginning of the proceedings and begin the tape recording of the hearing;

(2) Identify the hearing;

(3) Request that all attendants at the hearing state their names and swear in all attendants who intend to provide testimony during the hearing;

- (4) Explain to attendants how the hearing will proceed and address any necessary notifications required by these procedures;
- (5) Hear any preliminary motions or objections;
- (6) Allow parties to make opening statements;
- (7) Allow the City to present evidence and witnesses, and for cross examination of those witnesses by the other side;
- (8) Allow appellant to present evidence and witnesses, and for cross examination of those witnesses by the other side;
- (9) Allow parties to present rebuttal evidence and witnesses;
- (10) Allow parties to make closing statements;
- (11) Explain the issuance of the final written decision and appeals procedures; and
- (12) Close the hearing and terminate the tape recording of the hearing.

(j) Rules of Civility: The Hearing Officer and all parties and persons present at the administrative hearing shall act in a professional manner, be courteous, respectful, and civil towards one another. Use of abusive, demeaning, or humiliating language in written or oral communications during any part of the proceeding is prohibited. Interrupting the testimony of a witness or the proceeding in general is similarly prohibited. Any person actively engaging in abusive, demeaning, or humiliating language or who is otherwise engaging in rude, disparaging, obscene or inappropriate decorum towards any party, a witness, or the Hearing Officer, or who is disrupting the proceedings shall be subject to being expelled from Council Chambers by the Hearing Officer after one warning. (E.g., a party is warned about making disparaging comments about the witness while the witness is testifying, distracting the Hearing Officer and others during the proceeding. The party is warned that they are to stop and are informed to stop or else they will be expelled from the proceeding. In spite of being warned they continue to exhibit the same behavior. The party can be removed from the Council Chambers by the Hearing Officer.)

If a party to a proceeding or their witness is expelled from the hearing pursuant to this rule prior to their giving testimony in the matter, the right to submit that testimony is forfeited and will not be considered.

(k) Privilege: The technical rules relating to evidence, including but not limited to the California Evidence Code, or the Federal Rules of Evidence, will not apply during the hearing but the California rules governing attorney-client communication and attorney work product privileges shall apply.

(l) Recording: The Hearing Officer or employee of the City shall record the hearing with an electronic recording device and make that recording available to all parties by request as a recording. Any party may, at their own expense provide for the taking of the testimony by a qualified stenographic reporter.

(m) Continuance: The Hearing Officer may grant continuances from time to time upon request and for good cause, or upon their own motion. A continuance requested on the date of the hearing is disfavored.

(n) Motions: Any motions by the parties shall be in writing or made orally on the record during the hearing and shall clearly state the action requested and the grounds relied upon (e.g., disqualification, request for a continuance). Motions that are unnecessarily lengthy or are ancillary to the dispute at issue of the hearing are generally disfavored. The time to submit a prehearing motion to the Hearing Officer expires when any party to the proceeding begins the presentation of the merits (i.e., opening statements) of their case before the Hearing Officer.

(o) Burden of Proof: The City bears the burden of proof at an administrative hearing to establish the findings supporting the order at issue, the existence of a violation of the Municipal Code or applicable State codes. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

(p) Communication with the Hearing Officer: All substantive oral communications with the Hearing Officer concerning the merits of a particular shall be held in the presence of all parties at the administrative hearing. The Hearing Officer shall disclose any unilateral communications with any party during the hearing, except for communications that pertained only to the scheduling and calendaring of the hearing with representatives of the City.

(q) Disclosure and Disqualification: See Section VI above. Any party may raise objections for the record to the Hearing Officer and ask that the Hearing Officer disqualify themselves. The time to object or move to disqualify a Hearing Officer expires when any party to the proceeding begins the presentation of the merits of their case before the Hearing Officer. The Hearing Officer shall make the decision to grant or deny the request for disqualification.

(r) Administrative Order: At the conclusion of the hearing, the Hearing Officer shall issue a written decision and order, titled "Administrative Order" that affirms, reverses, or modifies the City's action based on their review of all relevant documents, evidence, and testimony. The Administrative Order shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision.

(1) The Hearing Officer's Administrative Order should identify those parties in attendance at the hearing, their counsel of record or representatives (if present), and also clearly identify within the Administrative Order who the "prevailing party" in the appeal is.

(2) The Hearing Officer's Administrative Order should state the reasons for the determination and indicate the evidence relied on for their findings. The Hearing Officer should make findings to bridge the analytic gap between the raw evidence and ultimate decision or order. The findings need not be extensive or detailed but should be adequate enough for a subsequent reviewer to trace and examine the Hearing Officer's mode of analysis that supported the decision.

(3) Extra-record evidence (evidence not submitted at the hearing or in any of the party's submittals) shall not be considered. The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The Hearing Officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(4) The Hearing Officer cannot assign or transfer responsibility for drafting the Administrative Order to an associate, paralegal, intern, sub-contractor, agent, or any other person or entity. The Hearing Officer must author and sign the Administrative Order.

(5) In the case of a notice and order of civil penalty, the administrative order may affirm, modify, or reject the daily rate or duration of the civil penalties depending upon the review of the evidence and may increase or decrease the total amount of civil penalties and costs assessed. Hearing Officer may issue an administrative order that requires the responsible person to cease from violating the Municipal Code or applicable State codes and to make necessary corrections within a specific time frame. As part of the administrative order, the Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines. The Hearing Officer may issue an administrative order which imposes additional civil penalties that will continue to be assessed until the responsible person complies with the Hearing Officer's decision and corrects the violation. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative order.

(6) The Hearing Officer shall author and deliver to the City their Administrative Order within twenty-eight (28) days of the conclusion of the hearing, unless the parties agree to a longer period.

(7) The Hearing Officer's Administrative Order shall become final on the date of service of the order. The Administrative Order shall be served on all parties by any one of the methods listed in Section 1.04.080 of the Municipal Code. Electronic service of the order is acceptable if a party is represented by counsel. (See e.g., Code Civ. Proc., § 1010.6E.) Once an Administrative Order becomes final as provided in Chapter 1.44, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6 or as may be amended hereafter.

(s) Scope of Hearings: Administrative appeal hearings are limited in scope by the Municipal Code section(s) which govern the use of the particular remedy which is being employed. A summary of the scope of some matters is described in this document. The Hearing Officer should consider the scope when determining what evidence is pertinent to each case.

#### Administrative Abatement

1. Existence of a public nuisance.
2. Due process requirements.
3. Method of collection of costs (i.e., special assessment, code enforcement lien, etc.).

#### Cost Confirmation Hearings (Abatements)

1. Verification of the work performed to achieve the abatement and the costs which may be charged to the responsible person.
2. Due process requirements.
3. No review of the need to abatement or the underlying abatement order.

### Administrative Civil Penalties

1. Whether the responsible person has caused or maintained a violation of the Municipal Code or applicable State code and that such provision existed on the dates specified in the Notice and Order.
2. Whether the amount of civil penalties assessed by the department is consistent and reasonable.
3. Due process requirements.
4. Award of administrative costs.

### Administrative Citations

1. The existence of the violation(s) on the date(s) cited.
2. The amount of penalty to be assessed and date by which it is to be paid.
3. Conditions or deadlines for corrective action.
4. Due process requirements.
5. Award of administrative costs.

### Recordation of Notice of Violation

1. Whether the condition listed in the Notice of Violation violates the Municipal Code or applicable State codes.
2. Due process requirements.

### Lien and Assessment Hearings

1. Due process requirements.
2. Whether the amount subject to the lien to be recorded or forwarded to the County for assessment has been paid.

(u) Administrative Record: The official administrative record of an appeal proceeding heard by a Hearing Officer should be comprised of the following: all written notices and proofs of service; all briefs, motions, responses, or objections filed with the Hearing Officer prior to or during the proceeding; all exhibits admitted as evidence during the proceeding; a list of participants present at any session of the hearing; the recording of the proceeding; and, the Hearing Officers' rulings, including all findings, decisions, and orders. The official administrative record shall be collected by the responsible department and delivered to the City Attorney for storing. The City shall maintain the Official Record for five years. Where a party requests the administrative record be prepared by the City to be produced to them, the party requesting the record shall be responsible for all reasonable and necessary costs associated with the preparation and duplication of the record, including but not limited to, staff time spent compiling and duplicating the record and court reporter fees.

## **XII. AVAILABILITY OF THESE POLICIES AND PROCEDURES**

These policies and procedures shall be provided to all Hearing Officers and shall be made available within a reasonable time to any person or party to an administrative hearing who requests a copy by submitting a request in writing or e-mail to the Office of the City Attorney.

*Adopted on 4/1/2022*

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