

Article 3: Police Regulated Occupations and Businesses

Division 5: Appeal Rights and Procedures

*(Incorp. 1-22-1952 by O-5046 N.S.,
contained in O-3683 N.S., adopted 3-9-1948.)
("Appeal to Council" retitled to "Appeal Rights and Procedures"
on 11-20-2000 by O-18885 N.S.)*

§33.0501 Right of Appeal to Hearing Officer; Time Limits

- (a) Except as provided in sections 33.0506 and 33.0507, any *person* who has regulatory action taken by the *Chief of Police* against the *permit* as described in sections 33.0403(b)(4) through (8), may request a hearing conducted by a hearing officer provided by the *City Manager*.
- (b) The request for a hearing must be in writing to the *City Manager* and must be made within ten calendar days from the date of the receipt of the notice of action denying, suspending, revoking or placing conditions on the *permit*.
- (c) Upon receiving a written request for a hearing, or upon the granting of a hearing pursuant to section 33.0501(f), the *City Manager* shall set a hearing not less than five nor more than thirty calendar days from the date of receipt of the appeal or from the granting of the hearing.
- (d) The *City Manager* shall notify the applicant or *permittee* of the date, time and place of the hearing by means of registered mail, certified mail or hand delivery.
- (e) Except as provided in section 33.0501(f), failure to file the request for a hearing within the ten calendar day period shall result in the denial of a hearing by the *City Manager*.
- (f) The appellant may request that the hearing be granted despite noncompliance with the ten-day filing rule. The appellant must demonstrate good cause for noncompliance in writing. The *City Manager* must forward the written request to a hearing officer, who will decide whether a hearing should be granted. The *Chief of Police* shall be afforded the opportunity to set forth his or her position in writing on this issue to the hearing officer.

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- (g) Any requests for a hearing that occur after thirty calendar days from receipt of the notice of regulatory action will not be forwarded to a hearing officer and must be denied by the *City Manager*.
- (h) Per Chapter 5, Article 5, all appeals of alarm user permits of fire-harmful gas alarm system revocations or penalties are conducted using the same procedures outlined in this Division. The term *Fire-Rescue Chief*, as defined in Chapter 5, Article 5, should be substituted for *Chief of Police* in this Division for appeals related to fire-harmful gas alarm systems. The terms *permit* and *police permit* refer to fire-harmful gas alarm system permits, as described in Chapter 5, Article 5, for appeals related to fire-harmful gas alarm systems.

(“Right of Appeal — Hearing Officer” retitled to “Right of Appeal to Hearing Officer; Time Limits” and amended 11-20-2000 by O-18885 N.S.)
(Amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)
(Amended 4-6-2016 by O-20625 N.S.; effective 5-6-2016.)
(Amended 11-8-2021 by O-21385 N.S.; effective 12-8-2021.)

§ 33.0502 Conduct of the Appeal Hearing

- (a) A hearing shall be conducted to determine the existence of any facts that constitute grounds for the denial, suspension, placing conditions upon or revocation of the *permit*.
- (b) The applicant, *permittee*, or the *Chief of Police* may have the assistance of counsel or may appear by counsel and shall have the right to present evidence. However, legal representation in administrative hearings is not required.
- (c) If the applicant or *permittee* fails to appear at the hearing, the appeal is abandoned and the action of the *Chief of Police* is final.

(“Right of Appeal to City Council” retitled to “Conduct of the Appeal Hearing” and amended 11-20-2000 by O-18885 N.S.)
(Amended 11-8-2021 by O-21385 N.S.; effective 12-8-2021.)

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§ 33.0503 Appeal Hearing Decision

- (a) The hearing officer may uphold the denial, suspension, revocation or other decision of the *Chief of Police*, may allow that which has been denied, reinstate that which has been-suspended or revoked, reverse or modify any other decision that is the subject of the appeal.
- (b) A copy of the hearing officer's decision specifying findings of fact and the reasons for the decision shall be furnished to the applicant, *permittee*, or the applicant or *permittee's* counsel, and the *Chief of Police* within thirty calendar days of the hearing. If the hearing officer determines the complexity of the case requires additional time in which to render a decision, the time in which to render the decision is automatically extended another thirty calendar days.

This subsection does not apply to *permittees* governed by section 33.0507.

- (c) The hearing officer's decision shall be final ten calendar days from the action of the hearing officer, except
 - (1) in the event of an appeal brought under section 33.0505; or
 - (2) if the *permittee* is governed by section 33.0507.
- (d) Except as to the emergency provisions of section 33.0406, the effect of a decision by the *Chief of Police* shall be stayed while an appeal to the hearing officer is pending or until the time for filing such appeal has expired.
- (e)
 - (1) The hearing officer's decision shall be the final administrative remedy, unless an appeal to the Committee on Public Safety and Livable Neighborhoods (or its successor committee) is made in writing with the City Clerk within ten calendar days of receipt of the hearing officer's written decision.
 - (2) However, if the hearing involves an applicant or *permittee* of a business or occupation that is a First Amendment protected business or occupation, including businesses and occupations governed by Chapter III, Article 3, Divisions 33 and 36 of this Code, the decision of the hearing officer is the final administrative remedy.

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- (f) In decisions involving businesses and occupations protected by the First Amendment, including businesses and occupations governed by Chapter 3, Article 3, Divisions 33 and 36 of this Code, the hearing officer’s decision is stayed as provided in section 33.0506.
- (g) If the hearing officer’s decision is to uphold the denial of a *police permit*, the denial remains in effect until otherwise modified or overturned by a court of competent jurisdiction. This subsection also includes denials of *police permits* for businesses and occupations protected by the First Amendment, including businesses and occupations governed by Chapter 3, Article 3, Divisions 33 and 36 of this Code.

(“Appeal Hearing Decision” added 11-20-2000 by O-18885 N.S.)
(Amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)
(Amended 11-8-2021 by O-21385 N.S.; effective 12-8-2021.)

§ 33.0504 Limits on Hearing Officer’s Power

A hearing officer has no power:

- (1) to declare an ordinance or statute unenforceable on the basis of it being unconstitutional unless an appellate court has made a determination that the ordinance or statute is unconstitutional;
- (2) to declare an ordinance or statute unconstitutional;
- (3) to declare an ordinance or statute unenforceable on the basis of its being preempted by another ordinance or statute, unless an appellate court has made a determination that the ordinance or statute is preempted; or
- (4) to declare an ordinance or statute preempted by another ordinance or statute.

(“Limits on Hearing Officer’s Power” added 11-20-2000 by O-18885 N.S.)

§ 33.0505 Right of Appeal to the Committee on Public Safety and Livable Neighborhoods; Procedure; Decisions

- (a) The applicant, *permittee*, and the *Chief of Police* have the right to appeal a hearing officer’s decision to the Public Safety and Livable Neighborhoods Committee of the City Council (or its successor committee).

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- (b) The effect of a decision by the hearing officer shall be stayed while an appeal to the Committee on Public Safety and Livable Neighborhoods (or its successor committee) is pending or until the time for filing such appeal has expired.
- (c) When an appeal is filed with the City Clerk, it shall be placed on the Committee on Public Safety and Livable Neighborhoods (or its successor committee) agenda for the limited purpose of determining whether the Committee will hear the appeal.
- (d) The Committee may accept an appeal for hearing when any of the following situations are found to exist:
- (1) The appellant was denied the opportunity to make a full and complete presentation to the hearing officer.
 - (2) New evidence is now available that was not available at the time of the hearing officer's hearing.
 - (3) The hearing officer's decision was arbitrary because no evidence was presented to the hearing officer that supports the decision.
 - (4) The appeal presents a Citywide issue on which guidance of the Committee on Public Safety and Livable Neighborhoods (or its successor committee) is required and the matter is of Citywide significance.
 - (5) The hearing officer's decision is in conflict with adopted Council policy or the Municipal Code.
- (e) The Committee on Public Safety and Livable Neighborhoods (or its successor committee) shall rely upon the record of the proceedings before the hearing officer and the written appeal. No oral presentations shall be made to the Committee on Public Safety and Livable Neighborhoods (or its successor committee) by proponents or opponents of the appeal.
- (f) A vote on a motion to set the appeal for hearing shall not constitute a vote on the merits of the appeal.

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- (g) If at least three members of the Committee vote in favor of hearing the appeal, the Chair to the Committee on Public Safety and Livable Neighborhoods (or its successor committee) shall set the appeal for hearing before the Committee.
- (h) A majority vote of the Committee is required to overturn the decision of the hearing officer.
- (i) The decision of the Committee to grant or deny the appeal is the final administrative remedy.
- (j) Section 33.0505 does not apply to applicants or *permittees* who are seeking to engage in, or are engaged in, a business or occupation protected by the First Amendment. This includes the businesses and occupations regulated in Divisions 33 (*peep show establishments*) and 36 (*nude entertainment*).

(“Right of Appeal to the Committee on Public Safety and Neighborhood Services; Procedure; Decisions” added 11-20-2000 by O-18885 N.S.)

(Retitled to “Right of Appeal to the Committee on Public Safety and Livable Neighborhoods; Procedure; Decisions” and amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)

§ 33.0506 Review for Denials of Permits to Engage in First Amendment Activity

Any *person* who has been denied a *police permit* for a business or occupation that is a First Amendment protected business or occupation, as defined in *FW/PBS v. City of Dallas*, 493 U.S. 215 (1990) or other controlling case law, shall have prompt judicial review of the decision to deny the *permit*.

The decision to deny such *permit* is the final administrative action for the applicant, who may then immediately seek writ review in Superior Court pursuant to local court rules, the California Rules of Court, and the Code of Civil Procedure. The businesses and occupations regulated in Divisions 33 (*peep show establishments*) and 36 (*nude entertainment*) are governed by this section.

(“Review for Denials of Permits to Engage in First Amendment Activity” added 11-20-2000 by O-18885 N.S.)

(Amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)

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§ 33.0507 Review for Regulatory Action Taken Against Permit Holders Engaged in First Amendment Activity

Any *person* who holds a *police permit* for a business or occupation that is protected by the First Amendment, and who has had regulatory action taken against their *permit*, shall have the same appeal rights as those contained in sections 33.0501 through 33.0503, except that:

- (a) The hearing officer shall issue and mail his or her decision to the parties or their counsel within fifteen calendar days of the completion of the appeal hearing to suspend or revoke the *permit*. The time to render a decision may not be extended unless all parties agree to such an extension; and
- (b) The hearing officer's decision is final on the date it is mailed to the parties or their counsel; and shall be the final administrative remedy; and
- (c) There is no appeal to the City Council or any subcommittee thereof; and
- (d) The hearing officer's decision shall include notice that either party may seek prompt judicial review of the decision pursuant to California Code of Civil Procedure section 1094.6; and
- (e) If the *permittee* seeks judicial review, the effect of the hearing officer's decision is stayed pending the judgment of the superior court. The stay shall continue for a period of 20 days from the filing of the notice of appeal from judgement or until the expiration of the time for filing the notice, whichever occurs first. If no judicial review is sought, the hearing officer's decision is final after the last date for seeking such review has passed.

("Review for Regulatory Action Taken Against Permit Holders Engaged in First Amendment Activity" added 11-20-2000 by O-18885 N.S.)

(Amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)

(Amended 11-8-2021 by O-21385 N.S.; effective 12-8-2021.)

§ 33.0508 Other Administrative Appeals Not Applicable

The appeal hearings contained in this Division are the only administrative appeal hearings that apply to decisions by the *Chief of Police* regulating police-regulated businesses. The administrative appeal process in Chapter 1, Article 2, Divisions 4 and 5 does not apply.

("Other Administrative Appeals Not Applicable" added 11-20-2000 by O-18885 N.S.)

(Amended 11-25-2014 by O-20438 N.S.; effective 12-25-2014.)

(Amended 11-8-2021 by O-21385 N.S.; effective 12-8-2021.)