



SAN JOAQUIN COUNTY HEARING OFFICERS

ADMINISTRATIVE HEARING PROCEDURES

1. **INTENT AND PURPOSE:** It is the intent and purpose of this Chapter to set forth the procedures that the Hearing Officer as defined in the San Joaquin County Development Title, Division 19: Enforcement Regulations, Chapter 9: Enforcement of Development Title shall follow when conducting an appeal of (1) an administrative action by the County relating to any violation of the San Joaquin County Development Title or (2) a Statement of Expense.
2. **CONDUCT OF HEARING:** The Hearing Officer shall conduct and preside over appeals of an administrative action by the County relating to (1) an administrative action by the County relating to any violation of the San Joaquin County Development Title or (2) a Statement of Expense.
3. **FAILURE TO APPEAR:** Failure to appear at the hearing shall constitute a waiver of any right to object to the decision of the Hearing Officer.
4. **REPRESENTATION OF PARTIES:** During the hearing the parties may be represented by counsel or other representative of the party's choice.
5. **SUBPOENAS:** The Hearing Officer may issue subpoenas and subpoenas *duces tecum* for the attendance of witnesses and the production of documents before and during the hearing at the request of any party or at his discretion. Compliance with California Code of Civil Procedure Section 1985, *et al.* shall be a condition precedent to the issuance of a subpoena *duces tecum*. Any amount required to be paid to witnesses appearing pursuant to subpoena under Section 1985, *et al.* shall be paid by the party at whose request the witness was subpoenaed or by the Hearing Officer as a reimbursable expense if he issued the subpoena at his discretion.
6. **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.
7. **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.

8. OFFICIAL NOTICE: At the request of any party the Hearing Officer may take official notice of any fact that may be judicially noticed by the courts of California. The Hearing Officer shall inform the parties of the matters to be noticed and those matters shall be noted in the record. Each party shall be given a reasonable opportunity to refute any request for the Hearing Officer to take official notice.
9. EVIDENCE: The technical rules relating to evidence, including but not limited to the California Evidence Code, will not apply during the hearing. The Hearing Officer may allow any relevant evidence to be admitted. The Hearing Officer may reject any evidence he deems to be unreliable, irrelevant, or unduly repetitious. The Hearing Officer shall not consider any oral or documentary evidence presented to him outside of the hearing or during inspection of the premises made pursuant to these procedures unless the parties stipulate in writing to such evidence and the stipulation is made part of the hearing record.
10. INSPECTION: The Hearing Officer may inspect subject premises provided that he (1) gives 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 his conclusions drawn therefrom, and (4) allows each party the right to rebut or explain any of Hearing Officer's observations and conclusions.
11. BRIEFS: The Hearing Officer may request that the parties to the appeal submit written briefs or statements of their position prior to the hearing. Any such briefs shall be provided to the Hearing Officer and all parties.
12. ORDER OF PROCEEDING: The Hearing Officer shall follow this order of proceeding in each hearing. The Hearing Officer may vary this order only if he determines, and states on the record, that special circumstances exist which justify the variance:
 - a. Announce the beginning of the proceedings and begin the tape recording of the hearing;
 - b. Identify the hearing;
 - c. Request that all attendants at the hearing state their names;
 - d. Explain to attendants how the hearing will proceed and address any necessary notifications required by these procedures;

- e. Hear any preliminary motions or objections;
 - f. Allow parties to make opening statements;
 - g. Allow County to present evidence and witnesses;
 - h. Allow appellant to present evidence and witnesses;
 - i. Allow parties to present rebuttal evidence and witnesses;
 - j. Allow parties to make closing statements;
 - k. Explain the issuance of the final written decision and appeals procedures; and
 - l. Close the hearing and terminate the tape recording of the hearing.
13. PRIVILEGE: The California rules of privilege shall apply during the hearing.
14. RECORDING: The hearing shall be recorded and made available to all parties by request as a recording.
15. CONTINUANCE: The Hearing Officer may approve one good faith request for a continuance by each party for good cause shown. He shall not approve any additional requests for a continuance by any party unless it is agreed upon by all parties in writing. The Hearing Officer may additionally continue the hearing if he feels that a continuance is required to ensure that all parties receive a full and equal opportunity for a fair hearing.
16. 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.
17. BURDEN OF PROOF: The County shall have the burden of proof. The proof required shall be a preponderance of the evidence.
18. COMMUNICATION WITH THE HEARING OFFICER: All substantive oral communications with the Hearing Officer shall be held in the presence of all parties. All written communications shall be served on all parties. The Hearing Officer shall disclose any unilateral communications with any party during the hearing.
19. DISCLOSURE AND DISQUALIFICATION: The Hearing Officer shall disqualify himself from serving as Hearing Officer in a particular matter where he has a conflict of interest within the meaning of the Political Reform Act (Government Code Sections 87100 *et seq.*), and shall otherwise comply with the disqualification provisions of Code of Judicial Ethics, Canon 3.E. Any party may raise objections for the record to the Hearing Officer

and ask that the Hearing Officer disqualify himself. The Hearing Officer shall make the decision to grant or deny the request for disqualification.

20. FINAL WRITTEN DECISION: At the conclusion of the hearing, the Hearing Officer shall issue a written decision that affirms, reverses, or modifies the Enforcement Official's findings and orders in the Notice/Order to Abate or the Statement of Expense based on his review of all relevant documents, evidence, and testimony.

- a. The Hearing Officer's decision shall identify the "prevailing party" in the appeal and award to that party reasonable costs and attorney's fees. No party's fees shall be awarded at an hourly rate greater than the hourly rate charged by the County for a Deputy County Counsel.
- b. The Hearing Officer shall send his written decision to the Clerk of the Board of Supervisors and all parties by registered or certified mail within 10 days of the conclusion of the hearing, unless the appealing party agrees in writing to a longer period.
- c. The Hearing Officer's written decision shall be final and shall be enforceable thirty-one (31) days after the Clerk of the Board of Supervisors receives it. Receipt will be presumed to have occurred five (5) days after the Hearing Officer mailed the decision to the Clerk of the Board.

21. OFFICIAL RECORD: The official record of an appeal proceeding heard by a Hearing Officer shall be comprised of the following: all written notices; 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 Hearing Officer or County shall maintain the Official Record for five years. The Hearing Officer shall provide a copy of the official record, or requested portion thereof, to any party upon written request and payment by the requesting party of the actual costs of duplication.