

SOLID WASTE LOCAL ENFORCEMENT AGENCY HEARING PROCEDURES

AS ADOPTED BY THE SONOMA COUNTY BOARD OF SUPERVISORS

Date: October 8, 2019

The following hearing procedures shall govern all hearings and appeals that the Hearing Officer is authorized or required to conduct pursuant to the California Public Resources Code (PRC). Hearings conducted before the Hearing Officer shall be in accordance with PRC Section 44310. To the extent that the procedures set forth below are in conflict with the PRC, the PRC shall control.

Section 1. Scheduling

(a) The Local Enforcement Agency (LEA) or its designee shall act as Clerk to schedule hearings, coordinating with hearing officers and parties as needed.

Section 2. Scope of Formal Review

The Hearing Officer shall hear and review an appeal of the LEA's administrative determination or a petition alleging the LEA's failure to act in accordance with the laws or regulations specified in PRC Section 44307, taking into account:

- (a) All of the material on which LEA staff based its determination or its decision to not act, including state law and all other applicable laws;
- (b) The reasons given by the appellant or the petitioner for requesting Hearing Officer review;
- (c) Any additional relevant documentary and, testamentary material submitted by the appellant or the petitioner; and
- (d) Any further information which the Hearing Officer in its discretion obtains by request or investigation at the proceedings in order to insure a fair, full and impartial review of the claim.

Section 3. Conduct of the Hearing

Hearings shall not be conducted according to technical rules of evidence, however:

- (a) Testimony. Oral evidence shall be taken only on oath or affirmation;
- (b) Admissibility of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state;

- (c) Exclusion of evidence. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time;
- (d) Hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining 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 submission of the case or on reconsideration;
- (e) Privilege. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing;
- (f) Record. All evidence must be part of the record and the Hearing Officer shall not conduct independent investigations or engage in off-the record conversations with witnesses or parties regarding the matter under consideration by the Hearing Officer; and
- (g) Judicial Notice. In reaching a decision, the Hearing Officer may take official notice, either before or after submission of the case for decision, of any generally accepted technical or scientific matter related to solid waste, and of any fact which may be judicially noticed by the courts of this State. The Hearing Officer shall inform the parties present at the hearing of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the Hearing Officer.

Section 4. Rights of Parties

Each party shall have the right:

- (a) To call and examine witnesses on any matter relevant to the issues of the hearing;
- (b) To introduce documentary and physical evidence;
- (c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though that matter was not covered in the direct examination. If an appellant does not testify on his or her behalf, he or she may be called and examined as if under cross-examination;
- (d) To impeach any witness regardless of which party first called the witness to testify;
- (e) To introduce rebuttal evidence; and
- (f) To be represented by any person who is lawfully permitted to so represent.

Section 5. Subpoenas

- (a) The provisions of Article 11 of Chapter 4.5 of the California Government Code, Section 11450.05 et seq., entitled "Subpoenas," shall apply to the conduct of hearings held by the Hearing Officer;
- (b) Without limiting the generality of subsection a, above, reference is made to the provisions of Government Code Section 11450.20 (a) which states: "Subpoenas and subpoenas duces tecum shall be issued by the agency [LEA] or the presiding officer at the request of a party or by the attorney of record for a party, in accordance with the Sections 1985 to 1985.4, inclusive of the Code of Civil Procedure;"
- (c) The Hearing Officer shall be considered the presiding officer for purposes of enforcing the provisions of Government Code Section 11450.05 et seq.

Section 6. Findings and Order

- (a) Within five (5) days following the conclusion of the hearing, the Hearing Officer shall make written findings of fact, based upon the evidence received at the hearing to support its decision and shall issue an order affirming, modifying, or overruling the determination or order of the LEA under appeal or the subject of the petition;
- (b) The decision of the Hearing Officer shall be final and conclusive pursuant to PRC Section 45017. An appeal may be filed with CalRecycle pursuant to PRC Section 45030 then to the Superior Court pursuant to PRC Section 45040;
- (c) The Hearing Officer shall provide a copy of the Hearing Officer's decision to the LEA. The LEA shall provide a copy of the Hearing Officer's decision to the appellant or the petitioner by United States mail or by personal service at the address listed on the appeal or the petition.

Section 7. Record

A record of the entire proceedings before the Hearing Officer shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Hearing Officer. A copy of the tape or transcript of the proceedings shall be available to all parties upon request and upon prepayment of the estimated cost of preparation of a copy of the tape or, if requested, the cost of preparation of the transcript. The Hearing Officer may order the parties to share the cost of a court reporter.

Section 8. Continuances

To the extent permitted under the PRC, the Hearing Officer may grant continuances for good cause shown. All time limits specified herein may be extended upon a showing of good cause.

Section 9. Oaths

The Hearing Officer has the power to administer oaths and affirmations.