

EXHIBIT A

SONOMA COUNTY RULES AND PROCEDURES FOR ADMINISTRATIVE HEARINGS

1. Applicability.

These Rules and Procedures apply to an administrative hearing held by a Hearing Officer in accordance with the Sonoma County Code.

2. Hearing Officers for Administrative Hearings.

A Hearing Officer is authorized to preside over an administrative hearing under Sonoma County Code Chapter 2, Article II, Division 9. A Hearing Officer must be a member of the California Bar admitted to practice no less than five years as required by Government Code section 27724.

3. Powers of Hearing Officers.

A Hearing Officer has the following powers and any other powers set forth in California Government Code sections 27721 and 27722 or the Sonoma County Code: conduct the hearing, decide a matter upon which a hearing has been held, make findings of fact and conclusions of law, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, continue the hearing, and prepare a record of the proceedings.

4. Limitations on Powers of Hearing Officers.

A Hearing Officer has no power to:

- a. Dispense equitable relief or remedies, except as provided by applicable law.
- b. Declare a statute or ordinance unenforceable or unconstitutional, unless an appellate court has made that determination.
- c. Declare a statute or ordinance unenforceable or refuse to enforce a statute or ordinance on the basis that federal or state laws or regulations prohibit enforcement, unless an appellate court has made that determination.
- d. Despite the prior sections, a Hearing Officer must comply with an order or direction from the Superior Court where a matter is remanded from Superior Court or where the Court issues an order affecting the administrative hearing proceedings.

5. Communications

- a. Party. Party includes the County, appellant, and property owner of the subject real property.

- b. Email Preferred. Electronic communications and submittals are preferred. Where possible, a party should provide the County an email address for receiving and submitting communications and documents related to the administrative hearing proceedings.
- c. Communication Between Parties Encouraged. The parties are encouraged to communicate directly. For example, before submitting a request to the Hearing Officer for a continuance or subpoena, a party should first contact opposing parties for mutual agreement on the continuance, to agree on a factual issue, or to arrange for production of documents or witnesses.
- d. Ex Parte Communications Prohibited. A party must not communicate with the Hearing Officer unless all parties are included in the communication or otherwise provided with notice and an opportunity to participate.
- e. Communications Not Prohibited. This section does not prohibit communications between the Hearing Officer and a County employee who has not served as investigator, prosecutor, advisor, or advocate in the proceedings or department action, when those communications involve a technical issue or are for the purpose of assisting the Hearing Officer carry out official duties.

6. Notice and Recusal of Hearing Officer.

- a. Notice of Hearing Officers. Prior to setting a matter for hearing, the County must notify the property owner and appellant in writing of all Hearing Officers that may preside over the administrative hearing.
- b. Objection to Hearing Officer.
 - i. Property owner or appellant may object to an individual sitting as the Hearing Officer with a showing of good cause for why the Hearing Officer could not impartially conduct the administrative hearing.
 - ii. An objection must be submitted in writing within 10 calendar days of the date of notice.
 - iii. Failure to submit a timely objection showing good cause constitutes a waiver of the right to object to a Hearing Officer.
- c. Recusal of Hearing Officer. A Hearing Officer must be recused upon timely objection and showing of good cause, as determined by the Hearing Officer.

7. Subpoenas.

- a. Authority to Issue Subpoenas. The Hearing Officer may issue a subpoena for witness attendance or document production upon a showing of good cause by a party or upon mutual agreement of the parties. Only the Hearing Officer may issue a subpoena; no party has the authority to issue a subpoena.

- b. Request for Subpoena. A request for subpoena and showing of good cause must be submitted in writing to the Hearing Officer and the parties at least 7 calendar days prior to the hearing.
- c. Objection to Subpoena. An objection to a request for subpoena must be submitted in writing to the Hearing Officer and the parties within a reasonable time to allow a determination by the Hearing Officer and compliance with the subpoena.
- d. Costs. The requesting party bears the responsibility and cost of serving the subpoena and the cost of witness fees demanded by the subpoenaed individual.
- e. Failure to Comply. Failure to comply with a subpoena issued under this section may result in adverse outcomes at the Hearing Officer's discretion, including an adverse factual finding, refusal to admit evidence, or enforcement of the subpoena through superior court.

8. Continuances.

- a. Authority to Continue Hearing. The Hearing Officer may grant a continuance for a reasonable time only upon a showing of good cause, mutual agreement of the parties, or as the Hearing Officer deems necessary.
- b. Request for Continuance Prior to Hearing. A request for continuance prior to the hearing must be submitted in writing to the Hearing Officer and the parties at least 7 calendar days prior to the hearing. However, a request for continuance based on mutual agreement of the parties may be made at any time prior to the hearing.
- c. Continuance During Hearing. The Hearing Officer may grant a continuance during the hearing only upon mutual agreement of the parties or if, in the interest of fundamental fairness, additional evidence is necessary for the Hearing Officer to issue a determination.
- d. Objection to Continuance. A party is entitled to object to a request for continuance.

9. Pre-Hearing Submissions.

- a. Staff Report. A staff report including the County decision at issue must be submitted to the Hearing Officer and the parties at least 10 calendar days before the hearing.
- b. Reply. The appellant and property owner may submit a written reply to the staff report. A written reply should be submitted at least 3 calendar days before the hearing.
- c. Request for Evidence and Witnesses. Upon request, evidence that will be relied upon by a party at the hearing and a list of witnesses that will be called must be submitted to the opposing party at least 3 calendar days before the hearing.
- d. Submission of Evidence and Argument. Before the hearing is closed, any party or member of the public may submit written evidence or argument. The person

submitting evidence has the burden of redacting confidential or personal information.

- e. Enter Into Record. All evidence and argument submitted prior to and during the hearing must be entered into the record during the hearing and retained by the County, unless the evidence or argument is specifically excluded by the Hearing Officer.

10. Fairness of Hearings.

Hearings must be conducted in a manner suitable to ensure fundamental fairness to all parties, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

11. Interpreters.

A party may arrange for and provide an interpreter to attend the administrative hearing, at that party's own cost. The interpreter must be sworn and affirm to perform the duties truthfully and provide a true interpretation of the questions asked and the answers given.

12. Accommodations.

Hearings will be located in an accessible facility, or through an accessible web-based platform. If an individual requires special assistance or accommodations in order to participate, that individual should contact the County at least 72 hours before the hearing to make arrangements.

13. Evidentiary Rules.

- a. Admission and Exclusion of Evidence. The hearing need not be conducted according to the California Evidence Code. Any relevant evidence must be considered if it is the sort of evidence upon which responsible persons rely in the conduct of serious affairs, regardless of a common law or statutory rule that might make admission of the evidence improper. Hearsay is admissible to supplement or explain other evidence. Unduly repetitious or irrelevant evidence will be excluded at the discretion of the Hearing Officer.
- b. Affidavits/Declarations. A party may introduce testimony via affidavit if an opportunity to cross-examine is provided to the parties. If the opposing parties elect not to cross-examine the witness, the right to cross-examine is waived and the affidavit may be given the same weight as if the witness had testified orally. If the introducing party does not afford an opposing party the opportunity to cross-examine, the affidavit may only be admitted as hearsay evidence. An affidavit should be notarized. An affidavit must conform to Cal. Code of Civil Procedure § 437c(d).
- c. Protective Order. All evidence submitted is a public record. A party may request that the Hearing Officer issue a protective order to maintain confidentiality of

evidence in accordance with exemptions to the Public Records Act. A request for protective order must be accompanied by an applicable exemption and authority. A party may object to a request for protective order, and the objection must be supported by applicable authority.

- d. Standard of Proof. The standard of proof is by a preponderance of the evidence.
- e. Burden of Proof.
 - i. The County has the initial burden of introducing evidence to establish the following, as relevant: the factual basis for its decision or action; that its actions were taken as part of staff's regular duties, following lawful procedures; the amount of County costs expended; that the amount of civil penalties assessed is appropriate; that an issue has not been timely appealed.
 - ii. The opposing party has the burden of introducing sufficient evidence to demonstrate why the County's decision or action did not comply with applicable law or was unsupported by the relevant facts.
 - iii. If the opposing party makes a sufficient showing that the County's decision or action should not be upheld, the County has the burden of introducing evidence sufficient to support its decision or action.
 - iv. The opposing party has the burden of proving any affirmative defense, including that a violation has been corrected or that a use or structure at issue is legal nonconforming.

14. Hearing Procedure.

- a. Order. The Hearing Officer will ordinarily proceed in the following order when conducting administrative hearings, however, the Hearing Officer may receive additional testimony or change the presentation order.
 - i. County. County staff present first. The presentation should include, as relevant, identification of the property and property owner, a brief history of the matter, an analysis of the legal and factual issues involved, an accounting of enforcement costs relating to the property, an assessment of civil penalties, and a recommended decision. The content of the presentation will vary depending on the nature of the hearing.
 - ii. Appellant. The appellant or appellant's representative presents second. The appellant's presentation should include the basis of the appellant's disagreement with the County's decision, and present facts or legal arguments relied upon to support appellant's position.
 - iii. Property Owner. If the appellant is someone other than the property owner, the property owner or property owner's representative presents third.
 - iv. County Rebuttal. County may rebut evidence or argument raised by appellant or property owner in their presentation.

- v. Other Public Comment. Other members of the public speak next.
 - vi. Closing Argument. The appellant, property owner, and then County, in that order, may rebut evidence or argument not already addressed and then present a closing argument.
- b. Testimony and Questioning.
- i. A party may call speakers to testify as part of the party's presentation.
 - ii. A party is entitled to cross-examine a speaker.
 - iii. The Hearing Officer may question a speaker.
- c. Closing the Hearing. After all testimony is taken, the Hearing Officer will close the public hearing unless the Hearing Officer continues the hearing in accordance with paragraph 8(c).

15. Speaker's Presentation.

- a. Speakers. A speaker includes a party providing testimony, a witness testifying as part of a party presentation, a member of the public making public comment, and a non-lawyer party representative.
- b. Swearing In. A speaker must be sworn prior to testifying or arguing.
- c. Identification of Speaker. A speaker must state and legibly print the speaker's full name and city of residence. A party representative must state whether the party representative is licensed to practice law in the State of California or is a non-lawyer party representative.
- d. Time and Content.
 - i. Speakers may introduce written, visual, and other evidence, which become part of the public record and property of the County.
 - ii. A party is entitled to at least 10 minutes to present. Public comment is limited to 3 minutes per speaker. The Hearing Officer may reasonably extend these time limits.
 - iii. Speakers with lengthy presentations are encouraged to submit them in writing.
- e. Limitation on Speakers. The Hearing Officer has the discretion to limit testimony.

16. Post-Hearing Submissions.

- a. Submission of Additional Argument. The Hearing Officer may request or grant a request for additional written argument from the parties to be submitted after closing the hearing and prior to issuing a decision. Additional written argument must be shared with all parties and retained by the County as part of the record.

- b. No Additional Evidence or Testimony. Except as provided in Section 16, no evidence or testimony may be accepted after the hearing is closed, unless the Hearing Officer reopens the hearing following notice pursuant to Sonoma County Code Section 26-92-050 or Section 35-26, as applicable.

17. Site Inspections.

- a. Authority to Inspect. The Hearing Officer may inspect the subject site prior to, during, or after the hearing is closed.
- b. Open to Public. Site inspections must be open to the public.
- c. Notice. Notice of the time and location of the site inspection must be given in accordance with Sonoma County Code Section 26-92-050 or Section 35-26, as applicable, unless the Hearing Officer gives notice during the hearing.
- d. Hearing Officer Statement. The Hearing Officer must state for the record during the hearing, or submit a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusions drawn from the site inspection.
- e. Rebuttal. Each party is entitled to rebut or otherwise respond to the Hearing Officer's statement of material facts and conclusions. The rebuttal or response may be oral or in writing at the Hearing Officer's discretion.

18. Recording.

- a. Means of Recording. The County must arrange for a hearing to be recorded by audio recording or a certified court reporter.
- b. Request for Transcript. If the Hearing Officer requests a transcript, the County will prepare a transcript and add the cost of preparation to the County's administrative costs for the hearing. Any other person requesting a transcript must pay the cost of preparation.

19. Hearing Officer Decisions.

- a. Timing of Decision.
 - i. The timing of the Hearing Officer decision is dependent upon the authorizing authority.
 - ii. If the hearing is held under Sonoma County Code Section 1-7.3 or 1-7.6, the Hearing Officer must render a decision within 20 days after the administrative hearing is closed.
 - iii. If additional written argument is accepted under paragraph 15 or 16, the timeline for issuing the Hearing Officer's decision will be tolled through the date of the last submittal.

- iv. If a Hearing Officer requires additional time to properly adjudicate the matter, the Hearing Officer must submit a written request for additional time to the County for approval, partial approval, or denial.
 - v. Failure of the administrative law judge to deliver a decision within the time required does not prejudice the rights of the parties in the case.
 - b. Finality.
 - i. The finality of the Hearing Officer decision is dependent upon the authorizing authority.
 - ii. Under Sections 1-7.3 and 1-7.6, a Hearing Officer decision is final, subject only to judicial review.
 - iii. Under Chapter 35, the findings and recommendations from a Hearing Officer are provided to the Board of Supervisors for a final decision, which is subject only to judicial review.
 - c. Not Precedential. No prior hearing officer decision may be expressly relied upon as precedent. Each matter must be determined on its own merits within the framework of applicable ordinances, resolutions, policies, statutes, or controlling published court cases.

20. Administrative Rules and Non-Substantive Changes.

- a. Administrative Rules. A County department is authorized to administratively adopt rules, policies, procedures, or best practices to further assist in managing administrative hearings held on behalf of that department.
- b. Non-Substantive Changes. The County Administrator's Office is authorized to make non-substantive corrections or changes to these Rules and Procedures without the Board of Supervisors' approval.