

# **ADMINISTRATIVE REGULATION**

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**SUBJECT:** Administrative Hearings

**NUMBER:** 21-001

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## **I. PURPOSE**

Various State and Local laws provide parties, aggrieved by decisions or citations issued by City Staff, or made by City Council or advisory bodies, with processes to appeal such decisions or citations to a Hearing Officer or Hearing Examiner (hereinafter "Hearing Officer"). Such appeals are heard in settings commonly referred to as administrative hearings. Both the United States Constitution and the California Constitution require that the City provide a fair process in conducting administrative hearings. An impartial decision maker, namely the Hearing Officer, is essential to a constitutionally fair hearing.

Hearing Officers are arbiters of facts and law for resolution of disputes and they are highly visible members of the City Government. Thus, independent, impartial, and competent Hearing Officers are important to promote public trust and confidence in the City's administrative hearing system.

Consistent with these Constitutional and legal principles, this Administrative Regulation provides guidance toward the qualification and responsibilities of Hearing Officers, the process of assigning cases to Hearing Officers, and the conduct of administrative hearings.

## **II. SCOPE**

This Administrative Regulation applies to all City departments and City contractors involved in an Administrative Hearing in front of a Hearing Officer. This Administrative Instruction does not apply to any hearing conducted by the California State Office of Administrative Hearings.

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## **III. DEFINITIONS**

1. "**Administrative Hearing**" shall mean a quasi-judicial proceeding, authorized and governed by the Alameda Municipal Code, before a Hearing Officer, during which evidence is proffered and testimony is given.
2. "**Hearing Officer**" or "**Hearing Examiner**" is a City Official assigned to preside over an Administrative Hearing.
3. "**Impartial**," "**impartiality**," and "**impartially**" shall mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a hearing officer.
4. "**City**" shall mean the City of Alameda.
5. "**Contractor**" shall mean any person who has entered into a contract with the City to perform services for the City.

## **IV. QUALIFICATIONS AND RESPONSIBILITIES OF HEARING OFFICERS**

### *A. Appointment of Hearing Officers*

The City Attorney is authorized to appoint a staff of Hearing Officers. Each Hearing Officer shall be currently licensed to practice law in the State of California with at least five years of experience in the practice of law within California and shall possess any additional qualification established by the City Attorney. Hearing Officers appointed for conducting hearing concerning Sunshine Ordinance complaints shall demonstrate knowledge of the Ralph M. Brown Act and the California Public Records Act and shall have read the City's Sunshine Ordinance.

Hearing Officers shall be appointed on a rotational basis and not be appointed on an ad hoc basis whereby Hearing Officer's income from future appointments depends entirely on the City's good will.

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## *B. Adjudicative Responsibilities*

1. Hearing Officers are designated to hear all cases requiring a hearing officer or hearing examiner pursuant to the Alameda Municipal Code ("AMC") or other City regulations, including but not limited to AMC Section 1-7 (ADMINISTRATIVE CITATIONS) except matters heard by the Building Code Hearing and Appeals Commission pursuant to AMC Section 2-17.
2. A Hearing Officer shall hear and decide all matters assigned except those in which the Hearing Officer is disqualified or unavailable.
3. A Hearing Officer shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.
4. A Hearing Officer shall perform his/her duties with impartiality and without bias or prejudice.
5. A Hearing Officer shall require order and decorum in proceedings before the Hearing Officer.
6. A Hearing Officer shall be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom the Hearing Officers deals in an official capacity, and shall require similar conduct of lawyers and other advocates appearing in front of the Hearing Officer.
7. A Hearing Officer shall not make any public comment about a pending proceeding, and shall not make comment of any kind that might substantially interfere with a fair hearing.

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## *C. Disqualification*

1. A Hearing Officer shall disqualify himself or herself in any proceeding in which judicial disqualification is required pursuant to Code of Civil Procedure Section 170.1 or in which disqualification is required pursuant to Government Code Sections 11425.30 – 11425.40.
2. Any party to an administrative hearing may seek to disqualify a Hearing Officer if the party presents facts that suggest that the Hearing Officer must be disqualified pursuant to this Administrative Regulation. Any such disqualification request shall be heard as soon as practicable by the assigned Hearing Officer.
3. If a City Department or Division believes that a Hearing Officer should be disqualified for matters arising from that Department or Division's work due to a continuing conflict, the Department or Division shall provide a written request for continuing disqualification to the City Attorney. The City Attorney shall promptly render a written decision regarding the request for continuing disqualification.
4. The parties to a hearing may waive disqualification in writing which recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the Hearing Officer, and included in the administrative record.

## **V. ASSIGNMENT OF HEARING OFFICERS TO CASES**

### *A. Initial Case Assignment*

1. Cases shall be assigned to Hearing Officers on a rotational basis as soon as the cases are received by City case assignment staff.
2. Upon being assigned a case, the assigned Hearing Officer shall promptly notify the City case assignment staff, in writing, of his/her acceptance or rejection of the case. A Hearing Officer may only reject a case if he/she is disqualified or unavailable. The Hearing Officer must provide a factual basis or reason for rejection of any case.

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## *B. Reassignment of Cases*

1. If a Hearing Officer is no longer able to perform his/her duties with respect to a previously assigned matter due to a conflict or unavailability, he or she shall promptly notify City case assignment staff so that the case may be reassigned pursuant to subsection A above.

## **VI. CITY STAFF AND CONTRACTORS' RESPONSIBILITIES AS ADMINISTRATIVE HEARING PARTICIPANTS**

City Staff and Contractors participating in administrative hearings shall follow these instructions:

1. When participating in Administrative Hearings, Staff and Contractors are representatives of the City, and thus should participate with integrity, professionalism, preparation and competence befitting of their station.
2. Staff and Contractors shall follow lawful orders and instructions of the Hearing Officer.
3. Staff and Contractors shall only present information to Hearing Officers that is consistent with truth and shall not seek to mislead the Hearing Officer with any false statement of fact or law.
4. Unless otherwise authorized by the Hearing Officer, Staff and contractors shall not engage in any ex parte communication, related to any pending case, with the Hearing Officer.

## **VII. PROCEDURES CONCERNING SUNSHINE ORDINANCE COMPLAINT HEARINGS**

On the City's webpage and to any subscriber who has requested to be noticed when there will be a hearing about a Sunshine Ordinance complaint, the City Clerk's Office shall provide 10 days' notice prior to the hearing of the date, time, and place of the hearing and whether the hearing will be via teleconference. The City Manager will also announce under City Manager's Communications at a City Council meeting any upcoming hearings. Parties who filed a Sunshine Ordinance complaint and members of the public are permitted to attend the hearing, including attending remotely.

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## **VIII AUTHORITY AND EFFECTIVE DATE**

Pursuant to AMC subsection e. of section 1-8.01, the undersigned promulgates this Regulation to implement administrative hearing procedures. This Regulation is effective on the date set forth below.

/s/ Yibin Shen

Yibin Shen, City Attorney

First issued in November 2019 as Regulation No. 19-001

Revised and renumbered in June 2021 to Regulation No. 21-01

Revised on April 8, 2024