



# ADMINISTRATIVE HEARING PROCEDURES

LIC-4001-PRO

## I. Hearing Officers

### a. Hearing officer panel

DCR shall maintain a roster of hearing officers to hear administrative appeals filed pursuant to Los Angeles Municipal Code (LAMC) Sec. 104.14. DCR shall assign hearing officers to hear appeals on a rotating basis such that once a hearing officer has heard an appeal, he or she shall not hear another appeal until all other hearing officers on the roster have been assigned to hear one appeal. However, if multiple hearings are scheduled for the same day, DCR may assign one hearing officer to hear all of that day's appeals. Further, if a hearing officer is unavailable or unable to conduct a scheduled hearing, DCR may assign the hearing to the next available hearing officer in the rotation.

### b. Hearing assistant

A DCR staff member or other City employee who has not previously advised DCR regarding the matters on appeal may assist the hearing officer with administrative duties, including, but not limited to, scheduling and noticing hearings, receiving pre-hearing disclosures and pre-hearing motions, tracking evidence at hearings, sending out hearing decisions to parties, and maintaining case files. The hearing assistant shall not be involved in the hearing officer's decision-making process on the issues presented at any hearing. The hearing officer and hearing assistant shall refrain from discussing the substantive issues of any case with each other.

The parties shall send all pre-hearing disclosures, pre-hearing motions, and communications to the hearing officer through the hearing assistant by email. Unless otherwise specified in a Notice of Administrative Hearing, the email address for the hearing assistant is [DCR.Admin.Hearing.Assistant@lacity.org](mailto:DCR.Admin.Hearing.Assistant@lacity.org).

### c. Due Process Counsel: legal counsel for hearing officers

Upon request from the hearing officer, the City Attorney may provide due process counsel to the hearing officer regarding the conduct of hearings but not to advise the hearing officer regarding the substantive findings and determinations to be made. To ensure fairness and due process, the due process counsel advising the hearing officer on a particular appeal will not advise DCR regarding that appeal.

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to its programs, services and activities.

Department of Cannabis Regulation

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#### **d. Disqualification of hearing officer**

A hearing officer shall be subject to disqualification on the basis of bias, prejudice, conflict of interest, or other reason provided by law. If a party believes the hearing officer should be disqualified, it shall submit a written motion stating the objection no later than 5 calendar days after the party received notice of the hearing officer's assignment or otherwise discovered or reasonably should have discovered the event or occurrence that establishes the reason for the proposed disqualification. The objection shall include a detailed explanation of the grounds for disqualification and the facts establishing the party's discovery of the grounds for disqualification, and provide all supporting evidence. Any opposition shall be due 5 calendar days after the motion is filed. No reply briefs or oral argument will be permitted. All motions and any oppositions thereto shall be submitted to the hearing assistant by email, with a carbon copy to the email address of the opposing party or their representative. The assigned due process counsel shall review the submission and decide, in his or her sole discretion, whether the hearing officer should be disqualified in a written decision that is served by email on the parties as soon as reasonably practicable.

Upon selection for a hearing, a hearing officer shall notify DCR and the Appellant if he or she has a personal or financial interest in the matter, or has a relationship with any of the involved parties which may cause him or her to have a conflict of interest, bias, or prejudice with regard to the appeal heard. Where the conflict of interest does not involve a financial interest, it may be waived by all parties and the hearing officer provided that is preceded by a full disclosure on the record of the basis for the conflict of interest and an agreement in writing to proceed before that hearing officer. DCR shall select a new hearing officer if one is required.

DCR may, in its sole discretion, remove a hearing officer from the panel if he or she fails to attend a hearing, timely issue a written decision, conduct a hearing in a fair and orderly manner, adhere to DCR's hearing procedures, exceeds his or her authority, addresses issues beyond the scope of those presented on appeal, or engages in improper billing practices.

## **II. Hearing Process**

### **a. Service**

With the exception of the hearing officer's final decision, all hearing-related documents and communications shall be served by and amongst the parties, hearing officer, and hearing assistant by email. Documents to be filed with or served on the hearing officer shall be delivered by email to the hearing assistant. Documents to be served on DCR or its attorneys at the Los Angeles City Attorney's Office shall be delivered to [DCRAppeals@lacity.org](mailto:DCRAppeals@lacity.org). Documents to be served on the Appellant shall be delivered to: (i) Appellant's primary email address on file with DCR in the DCR Licensing Portal (Accela) or the email address of the Appellant's authorized agent on file with DCR in the DCR Licensing Portal, if any, and to (ii) Appellant's hearing representative, if any. The Appellant is responsible for keeping their email address and their agent and hearing representative's email addresses information up to date.

### **b. Pre-hearing disclosures**

If the parties have any pre-hearing disclosures as described under LAMC Secs. 104.14(b) or (e), they shall serve them on each other via email according to the timelines set forth in the LAMC unless they mutually agree upon another date(s). Each party is responsible

for making sure that the hearing assistant receives a carbon copy of their own pre-hearing disclosures via email, and the hearing assistant shall provide the hearing officer with copies of the parties' respective disclosures. The hearing officer shall have discretion to exclude any evidence offered by a party that was not disclosed in accordance with LAMC Secs. 104.14(b) or (e).

**c. Ex parte communications**

The hearing officer shall not communicate with DCR (excluding the hearing assistant) or the parties about the substance of a pending appeal outside of a properly noticed hearing. If a hearing officer receives or engages in an ex parte communication, the hearing officer's due process counsel shall be immediately notified and may determine whether the hearing officer may continue their duties or should be disqualified based thereon.

**d. Hearing location**

All hearings shall take place at a location within the City of Los Angeles or be conducted virtually, as determined by DCR.

**e. Hearing date, length, and continuances**

1. A hearing date(s) shall be set following a reasonable effort of the parties to meet and confer about their availability and how much time each party will require to present their evidence. The hearing assistant shall be responsible for coordinating the hearing officer's availability, and serving a Notice of Administrative Hearing to Appellant by email. DCR may unilaterally set a hearing date if, after reasonable efforts to coordinate, the parties are unable to reach an agreement.

2. The Notice of Administrative Hearing shall include the hearing date(s) and time, the location of the hearing, and the hearing officer assigned.

3. Once a Notice of Administrative Hearing date is served on the Appellant, a hearing date may only be continued for good cause as determined by a hearing officer. When seeking a continuance, a party shall submit a written motion for the continuance within 3 calendar days following the time in which the party discovered or reasonably should have discovered the event or occurrence that establishes good cause for a continuance. Before a motion is submitted, the party requesting a continuance shall make reasonable efforts to confer with all other parties to determine whether any party opposes the request and to obtain future dates when all parties are unavailable for a continued hearing over the next six months and at least three alternative preferred future hearing dates. Any opposition to a continuance motion shall be due 5 calendar days after the motion is filed. No reply briefs or oral argument will be permitted. All motions and any oppositions thereto shall be submitted to the hearing assistant by email, with a carbon copy to the email address of the opposing party or their representative. A hearing officer shall issue a written decision on any continuance motion as soon as reasonably practicable.

4. The parties and the hearing officer shall use their best efforts to complete hearings, including any continuances, within 12 months from the date that the request for an administrative hearing was made.

5. The addition, change, or withdrawal of counsel or other representative does not alone constitute grounds for a continuance of any noticed hearing.

**f. Hearing consolidation**

1. Any party may submit a written motion for two or more separate hearings to be consolidated into a single hearing when they involve a common question of law or fact or involve the same Appellant(s). The moving party shall submit a motion to every hearing officer in every individual hearing sought to be consolidated at least 15 calendar days before any such hearings are noticed to be heard. Any opposition to a consolidation motion, by an opposing party or a party in another hearing that is sought to be consolidated, shall be due at least 3 calendar days after a motion is submitted. No reply briefs or oral argument will be permitted. All motions and any oppositions thereto shall be submitted to the hearing assistant by email, with a carbon copy to the email addresses of all parties or their representative in the cases sought to be consolidated. The motion shall be decided by the hearing officer assigned to the appeal of the moving party, under his or her sole discretion, within 3 calendar days after oppositions are due.

For example, in the event a motion to consolidate is submitted, the calendar for the administrative hearing would appear as follows:

- Notice of Administrative Hearing mailed: at least 20 days before hearing date
- Any motion for consolidation: at least 15 days before any hearing date that is sought to be consolidated is noticed to be heard
- Any objections to consolidation motion: at least 12 days before any hearing date that is sought to be consolidated is noticed to be heard
- Hearing Officer issues decision re: consolidation: at least 9 days before any hearing date that is sought to be consolidated is noticed to be heard
- Exchange of disclosures under LAMC Section 104.14: at least 7 days before hearing date

2. All parties may stipulate to a consolidated hearing or separate hearings. In the event a stipulation is reached, the parties shall transmit a written stipulation signed by all parties to every hearing officer in every individual hearing sought to be consolidated at least 15 calendar days before any such hearings are noticed to be heard in an email to the hearing assistant, and with a signature line for the hearing officer to order the consolidation or separation. The stipulation shall be decided by the hearing officer assigned to the earliest filed appeal, under his or her sole discretion, within 3 calendar days after the stipulation is submitted.

3. If two or more separate hearings are ordered to be consolidated, the previously

noticed separate hearing dates shall be automatically vacated and the consolidated hearing shall be assigned to the hearing officer who is presiding over the earliest filed appeal. A new consolidated hearing date(s) shall be set following a reasonable effort of the parties to meet and confer about their availability and how much time each party will require to present their evidence. DCR shall be responsible for coordinating the parties' availability with the hearing officer via the hearing assistant, and the hearing assistant shall serve a Notice of Consolidated Administrative Hearing to Appellants. DCR may unilaterally set a hearing date if, after reasonable efforts to coordinate, the parties are unable to reach an agreement.

#### **g. Hearing rules and procedures**

1. Each party is entitled to represent itself without legal counsel or choose a representative at their own expense who is licensed to practice law in the state of California to represent them at a hearing. The Appellant is responsible for keeping the hearing officer and DCR informed of whether they are represented by legal counsel and their counsel's contact information.

2. Each party may present relevant evidence at the hearing, including, but not limited to, documents and witnesses. The hearing officer shall have the discretion to limit the number of witnesses from each party and to exclude witnesses from the hearing room until it is time for them to testify.

3. Hearings shall be open to public observation. The hearing officer shall nonetheless have the discretion to order the closure of the hearing, in whole or in part, or to make other protective orders to the extent necessary or proper in accordance with federal, state, or local law or to ensure a fair hearing in the circumstances of the particular case. The hearing officer shall also have discretion to exclude persons whose actions impede the safety or orderly conduct of the hearing.

4. A party who requires an interpreter or special accommodation during the hearing, on behalf of themselves or a witness, shall submit a written request by email to the hearing assistant and [DCRAppeals@lacity.org](mailto:DCRAppeals@lacity.org) for an interpreter or special accommodation at least 3 business days in advance of the noticed hearing date.

5. The hearing shall be recorded by a digital recording device provided by DCR. All conversations between the hearing officer and the parties related to the hearing shall be recorded. Any party to the hearing may, at its own expense, cause the hearing to be recorded and transcribed by a certified court reporter.

6. After turning on the recording system, the hearing officer shall read the date and the title of the appeal and ask for appearances from all parties. The hearing officer will inquire if all parties are ready to proceed and then explain the hearing process and confirm that all parties understand the process.

7. Subject to the hearing officer's sole discretion, the following evidence may be identified and admitted into the record:

- i. DCR administrative decision being appealed;
- ii. The appeal form filed by the Appellant;
- iii. The hearing notice(s);
- iv. The parties' pre-hearing disclosures; and
- v. Any other evidence the hearing officer deems appropriate.

8. The hearing officer shall allow the parties to present relevant evidence, subject to the following rules:

- i. Since DCR has the burden of proof by the preponderance of the evidence, it shall have the first opportunity to present argument and evidence concerning the appeal. The Appellant shall then have an opportunity to present argument and evidence concerning the case.

- ii. Each party may present its case in the manner of its choosing, including, but not limited to, argument from a hearing representative, witness testimony, and/or submission of documentary evidence. Generally, any evidence that the hearing officer determines to be relevant shall be admitted if it is the sort of evidence persons would commonly rely on in the conduct of their business affairs. If the evidence meets this standard, the hearing officer may not exclude it solely because it is introduced in a manner that would not meet the evidentiary standards in a formal judicial proceeding; notwithstanding, the hearing officer has the discretion to exclude evidence that is irrelevant, duplicative, consumes undue time, lacks sufficient indicia of credibility or authenticity, or is outside the scope of the hearing.

- iii. Each party is responsible for redacting privileged or otherwise confidential or sensitive information present in the documents they offer for admission.

- iv. The hearing officer shall administer the following an oath to all witnesses prior to testifying:

*You do solemnly state, under penalty of perjury, that the testimony you may give in the cause now pending in this hearing shall be the truth, the whole truth, and nothing but the truth.*

- v. Each party shall be allowed a reasonable opportunity to conduct a direct examination of each witness it calls, followed by an opportunity for the other party to cross-examine the witness. The hearing officer, at his or her discretion, may permit a re-direct (or re-cross) examination of each witness.

- vi. The hearing officer may ask questions of either party or a witness, as necessary, to clarify testimony and evidence.

vii. Each party is entitled to a fair and reasonable amount of time to present its case, taking into account the quantity and complexity of the issues and the nature of the evidence the parties intend to present. Each party shall have a reasonable opportunity to present rebuttal evidence.

viii. The hearing officer should confirm on the record when each party has no further evidence to present, after which each party shall be allowed a reasonable opportunity to summarize its position through a closing argument or statement. The hearing officer may ask questions of either party, as necessary, to clarify their arguments.

ix. When both parties have rested their case, the hearing officer will then close the hearing unless, in the hearing officer's discretion, it is left open. Prior to turning off the recording system, the hearing officer should clearly state whether the hearing has been completed and the record has been closed.

9. The hearing officer may issue evidentiary and procedural decisions during the course of the hearing as necessary to maintain an efficient process and ensure the hearing is conducted in adherence to the law and the requirements of due process. The hearing officer may continue the hearing if there is not enough time to complete the hearing on the noticed date.

#### **h. Motions**

All written motions or briefs shall be printed in 12-point font on paper with at least one inch margins. Motions and opposition papers may be made by letter and shall be limited to 10 pages in length, excluding exhibits. Closing briefs, if any, shall be limited to 5 pages in length unless otherwise specified by the hearing officer. All motions and any oppositions thereto shall be submitted to the hearing assistant by email, with a carbon copy to the email address of the opposing party or their representative.

### **III. Hearing Officer's Decision and Written Findings of Fact**

a. In hearings conducted under LAMC Sec. 104.14(a)(1) through (a)(4), the hearing officer shall issue a written decision to uphold, reject, or modify the DCR action being appealed with findings of fact within 30 calendar days after the close of the hearing. In hearings conducted under LAMC Sec. 104.14(a)(5), the hearing officer shall issue a written decision within 72 hours of the close of the hearing. The parties may agree, in writing or orally on the record in the presence of the hearing officer, to extend the time in which the hearing officer shall issue a written decision.

b. The hearing officer's final written decision shall be served on the Appellant or the Appellant's authorized agent on file with DCR in the DCR Licensing Portal, if any, and to the Appellant's hearing representative, if any, by U.S. mail.

c. The hearing officer's decision shall, at a minimum, include: (i) a list of all exhibits admitted into the record; (2) a summary of the findings of fact, including, but not limited to, any determinations of credibility; (3) rulings on any matters not determined at the hearing; and (4) a decision to uphold, reject, or modify the DCR action being appealed.

d. Failure of the hearing officer to issue a decision within the time required does not prejudice the rights of DCR in the case or constitute a rejection or reversal of the DCR action being appealed.

e. A hearing officer's decision may not be expressly relied on or cited to as precedent.

