

Item 10 - Administrative Hearing Training Outline & Slide Deck

PUBLIC ETHICS COMMISSION



ADMINISTRATIVE HEARING TRAINING

I. WHAT IS AN ADMINISTRATIVE HEARING?

A. An Administrative Hearing is a hearing before a Hearing Officer where laws, rules, ordinances, and factual evidence are presented, considered, and a decision is rendered. Administrative law hearings, like the Public Ethics Commission (Commission or PEC) Administrative Hearings, are less formal than courtroom trials.

B. The Commission's Administrative Hearings are open to the public, except to the witnesses as needed, and open to public comment.

C. For the Commission, the goal of an Administrative Hearing is to provide a neutral and impartial forum in which the parties may resolve an issue in dispute. The Hearing Officer(s) must conduct the hearing in a fair, effective, and efficient manner. The Hearing Officer(s) renders sound and equitable decisions in a timely fashion, based on all the factual evidence and testimony presented.

D. Roles and Duties within the Administrative Hearing

1. Enforcement Chief
2. Executive Director
3. Commission Assistant
4. City Attorney
5. Hearing Officer(s)
6. Full Commission

II. INITIATING AN ADMINISTRATIVE HEARING

A. Enforcement may request a hearing if it has been unable to reach agreement with the respondent as to liability and/or an appropriate resolution.

B. The Enforcement Chief can make a written recommendation to resolve a pending enforcement complaint through an Administrative Hearing. The full Commission will receive the Enforcement Chief's probable cause report and hearing recommendation at one of its public meetings, at which time it will decide whether there is probable cause to believe the violation(s) occurred, and whether to accept the recommendation to conduct a hearing.

C. When deciding to conduct a hearing, the Commission must also determine whether:

1. The full Commission will sit as a Hearing panel and the Commission Chair, or a designee will serve as the Hearing Chair; or
2. One or more Commissioners will be delegated to sit as a Hearing panel with a member of the panel to serve as the Hearing Chair; or
3. An independent Hearing Officer will be selected. The Executive Director selects the independent Hearing Officer from a list; or



4. To petition for a California Administrative Law Judge (ALJ). When recommending an ALJ hearing, the Enforcement Chief confirms with OAH the current cost to utilize an ALJ and includes the estimated cost in the recommendation to the Commission. The associated costs may be \$10,000 or more.

D. Notice of Hearing

1. The Executive Director notices the date, time, and location at least 30 days prior to the hearing date.

2. Notice must be publicly posted online and with the City Clerk seven days prior to the hearing date.

III. PROCEDURAL DUE PROCESS

A. Procedural Due Process

1. Notice.

2. Opportunity to be heard by a neutral adjudicator.

B. Resources

1. As provided by the Office of Administrative Hearings.

2. As provided by the Commission Enforcement Procedures/Hearing Procedures.

IV. PRELIMINARY MATTERS

A. Determination of Preliminary Matters

1. Any party may submit in writing preliminary matters for determination by the Hearing Officer or Chair/designee if the hearing will be conducted by the Commission. These must be submitted to the Commission Assistant (Calendar Clerk) no later than seven days prior. The party submitting a preliminary matter must show that they attempted to resolve the matter with the opposing party and that copies of the request were given to opposing party.

2. The Hearing Officer can determine preliminary matters upon submission of the written requests, without an oral hearing.

B. Examples of preliminary matters:

1. Whether multiple claims within a single complaint may be scheduled separately.

2. Whether similar complaints filed by separate individuals or entities may be joined.

3. Scheduling of witnesses.

4. Production of documents and issuance of subpoenas.

5. Scheduling of pre-hearing conferences.

6. Disqualification of any member of the Commission from participation in the hearing on the merits, i.e., conflicts of interests, recusal.

7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

C. Written Materials - Due five days prior to the Hearing

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1. Any written materials (non-subpoena) must be submitted to the following parties at least five days prior to the hearing to:
 - a) *Hearing Officer*
 - b) *Executive Director*
 - c) *Opposing parties*
2. A written argument need not be submitted, but if submitted it cannot exceed 15 pages.
3. Documentation more than 15 pages is allowed only upon prior approval (prior to the five-day deadline) of the Commission Chair or designee.
4. For a hearing conducted by a commissioner or designated Hearing Officer, the Commission's written materials include a Complaint in the form of a written memorandum from the Commission Enforcement Chief to the Hearing Officer.
 - a) *Upon the conclusion of the hearing, the Enforcement Chief can provide, at the request of the Hearing Officer, a draft proposed Findings of Fact and Conclusions in electronic format so that it can be altered and finalized by the Hearing Officer.*
5. For a hearing conducted by the Office of Administrative Hearings Administrative Law Judge, the written materials should conform to the OAH requirements.

D. Subpoenas of Persons or Documents

1. Subpoenas to compel witnesses to testify, or to bring documents, must be given to Commission staff no later than 14 days before the hearing date. Subpoena must include:
 - a) *Person = Name and address of witnesses and importance of their testimony.*
 - b) *Documents = Description of the documents sought, explanation of why the docs are necessary for the resolution of the complaint, name, and address of any witness in control of the docs.*
2. Subpoenas may be issued by the Executive Director or Hearing Officer, and only upon the above showing of good cause.
3. The party requesting the subpoena is responsible for its service on the appropriate persons and must provide a copy to all opposing parties.

E. Continuation and Postponement of Hearings. A postponement may be granted prior to the hearing only upon written request to the Commission Chair or Hearing Officer. At the hearing, a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.

V. HEARING PROCEDURES

- A. Introduction and brief explanation of the procedure by the Hearing Officer made to the parties. The Hearing Officer reads a script provided by Commission staff.
1. Record of Proceedings – Proceedings are recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.



B. Hearing Format

1. Opening Remarks/Case summary by Complainant (Time limit is set and varies by case, 10/15/20 minutes).
2. Opening Remarks by Respondent (set an equal time limit).
3. Complainant presentation of evidence.
 - a) *Formal Rules of Evidence do not apply (i.e., no hearsay rule, no need to authenticate documents, etc.).*
4. Respondent rebuttal of evidence, presentation of additional evidence.
5. Complainant presentation of witness testimony.
6. Administering the Oath/Affirmations.
 - a) *For each witness: "Do you swear under penalty of perjury that you will tell the truth during this administrative hearing?"*
 - b) *No right to cross-examination, but parties may rebut, or through the Hearing Officer, may ask questions of any witness (per Complaint Procedures).*
7. Respondent rebuttal to witness testimony.
8. Respondent presentation of witness testimony.
9. Complainant rebuttal to witness testimony.
10. Public Comment.
11. Complainant closing remarks (set time limit).
12. Respondent closing remarks (set equal time limit).
13. Complainant rebuttal (set time limit).
14. Close the hearing.

VI. FINDINGS OF FACT AND CONCLUSIONS

- A. What are Findings of Fact and Conclusions (Findings of Fact, Findings of Credibility)?
 1. Findings of Fact set forth the facts the Hearing Officer found to be true and the conclusions of law the Hearing Officer reached regarding those facts.
 2. Credibility Findings: Most hearings raise issues of credibility: to which of the evidence, if any, to give credit. Credibility may be defined as "the quality or power of inspiring belief." *Indiana Metal Prods. v. NLRB, 442 F.2d 46,51 (7th Cir. 1971) (quoting Webster's Third New International Dictionary (1966)).*
- B. Findings of Fact and Conclusion Procedures. Hearing Officer/panel has 14 days to deliver Findings of Fact and Conclusions to Executive Director.
 1. If heard by full Commission, then Commission can decide at the hearing whether a violation has occurred or direct the Executive Director to prepare a Findings of Fact and Conclusions for approval at the next meeting.
 2. Executive Director delivers copies of Findings of Fact and Conclusions to all parties.
 - a) *Any party may submit within 7 days a written request to Chair for rehearing, with copies to all parties.*



- b) *Other party has seven days from receipt of written request to submit written opposition or support to Chair.*
 - c) *Chair determines whether to rehear and the process for doing so.*
 - 3. Executive Director places Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or special meeting called by Chair.
 - 4. Commission may adopt in whole or with modifications.
 - a) *Standard of proof = if the weight of the evidence shows that it was more likely than not that a violation occurred, then the Commission shall find a violation. Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. Taken as a whole, the evidence shows that the fact or facts sought to be proved are more likely than not.*
- C. Other Relevant Terms:
 - 1. Burden of Proof: It is the obligation of a party to introduce evidence sufficient to either prove or disprove the existence or nonexistence of a fact or facts in dispute on an issue raised between the parties.
 - 2. Factual Evidence: Is used to sustain or support a party's position whether it be the Complainant's, the Respondent's, the Appellant's, or the Appellee's. Evidence is usually presented at the Administrative Hearing and typically of two types: Documentary evidence consists of something concrete such as documents, records, and other similar materials. Testimonial evidence is statements made under oath by individuals testifying at the hearing.
 - 3. Ex Parte Communication: Communication with the Hearings Officer by a party without the knowledge of or outside the presence of the other party. No party or person can communicate about the merits of the case with the Hearing Officer designated to hear and decide the matter other than at the time of the prehearing/hearing.

VII. PENALTIES

- A. In addition to factual findings and conclusions, the Hearing Officer may issue a recommended penalty. The full Commission will decide at one of its public meetings whether to accept or modify the recommended penalty. ***The Commission cannot modify the Hearing Officer's factual findings underlying their penalty recommendation.***
- B. Penalty Guidelines. The Public Ethics Commission is authorized by the Charter of the City of Oakland (City Charter) to impose penalties, remedies, and fines as provided for by local ordinances that are within the Commission's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act, and Lobbyist Registration Act. The Guidelines include general principles and factors to consider in determining a penalty and a tiered approach to penalties based on the seriousness of the violation. The Guidelines are ***advisory only***, and do not limit the Commission from using discretion to deviate from the guidance when atypical or egregious circumstances exist



C. Imposition of penalties. The Commission will consider all relevant mitigating, and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the Commission);
7. The degree to which the respondent cooperated with the Commission's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The Commission has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors in no way restricts the Commission's power to bring an enforcement action or impose a penalty.

Ultimately, the hearing officer (when making a recommendation) and the full Commission (when making a final decision) have very broad discretion when deciding upon a penalty. So long as the penalty is within the range prescribed by the applicable ordinance, the hearing officer and Commission may select a penalty that they believe is the appropriate one under the totality of the circumstances.

VIII. FINAL ORDER

- A. Once the hearing is completed, the Hearing Officer is responsible for preparing a Proposed or a Final Order which sets out all the facts of the case, recites the law that governs the case, applies the law to the facts, and includes the imposed penalty.
- B. Action upon Conclusion of Hearing. Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing closes.
 1. If the complaint was heard by a Hearing Officer, a single member of the Commission, or a Commission panel, they may take the matter under submission for a period of no more than 14 days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners must be done publicly.

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2. Upon receipt, the Executive Director delivers a copy of the proposed Findings of Fact and Conclusions to all parties. a. No later than seven days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint.
3. The Commission Chair may accept the proposed Findings of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that:
 - a) *The proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions; or*
 - b) *The Conclusions are not supported by substantial evidence.*
4. The party making the request must provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party has seven days from receipt of the written request to submit written opposition or support to the Commission Chair.
5. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, the Chair notifies the Executive Director, who then places the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or a special meeting called by the Commission Chair.
6. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence may be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
7. The decision of the Commission Chair on any request for re-hearing is final.
8. The Commission may either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact.
9. If the complaint was heard by the full Commission, the Commission decides, upon conclusion of the hearing and by majority vote of those Commissioners who have heard the evidence, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
10. The Commission may determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
11. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial, or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission makes its findings and recommendations public.
12. The Commission's decision following a hearing are final and constitute closure of the administrative process with respect to any complaint.



IX. COURT REVIEW

- A. Remedies. Upon conclusion of the administrative process, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within 90 days, as provided by law.
- B. Courts will use Substantial Evidence standard and will defer to local municipalities for procedure and policy.
- C. Commissioner Recusal for Conflict of Interest or Bias. A commissioner or a member of the Commission staff must recuse themselves from participating in the resolution of any complaint in which they have a conflict of interest or in which they, by reason of interest or prejudice, cannot perform their duties in an impartial manner and free from bias.

X. RESOURCES

[City Charter – Public Ethics Commission Enabling Ordinance](#)

[Public Ethics Commission Operations Policies](#)

[Enforcement Complaint Procedures](#)

[Enforcement Penalty Guidelines](#)

[New Commissioner Handbook](#)



Public Ethics Commission | CITY OF OAKLAND

Administrative Hearings





Road Map of Training

1. What is an Administrative Hearing?
2. Initiating an Administrative Hearing
3. Procedural Due Process
4. Preliminary Matters
5. Hearing Procedures
6. Findings of Fact and Conclusions
7. Penalties
8. Final Order
9. Court Review





What is an Administrative Hearing?



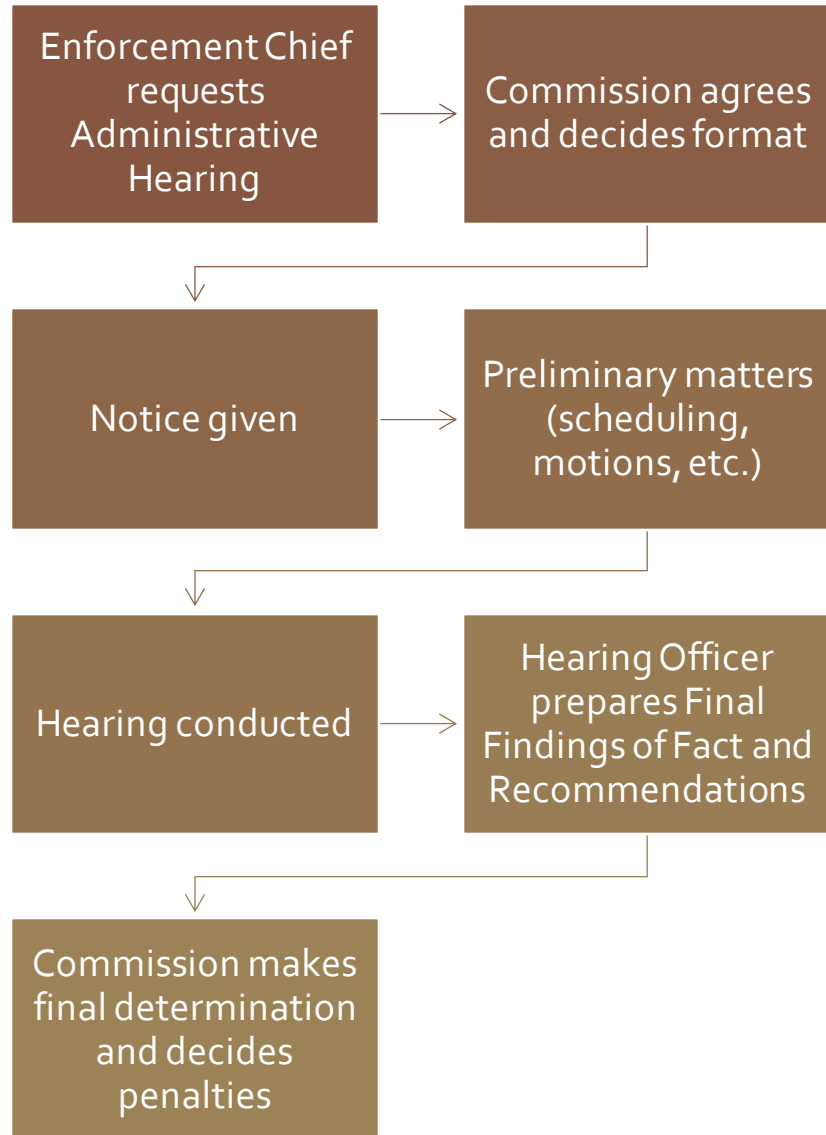
Administrative Hearings

A neutral and impartial forum in which the parties may resolve an issue in dispute.

A hearing before a Hearing Officer where laws, rules, ordinances, and factual evidence are presented, considered, and a decision is rendered.



Hearing Stages



Roles and Duties





Initiating an Administrative Hearing



Deciding to Hold an Administrative Hearing



When enforcement staff cannot settle a case, the Enforcement Chief submits a probable cause report and hearing recommendation to the Commission. The Commission then decides:

- If there is probable cause to believe the violation(s) occurred; and
- Whether to accept the recommendation to conduct a hearing.



Deciding Who Will Conduct the Hearing



The Commission must then determine who will conduct the hearing:

- The full Commission;
- One or more commissioners sitting as a panel;
- An independent Hearing Officer; or
- A California Administrative Law Judge.



Hearing Notice

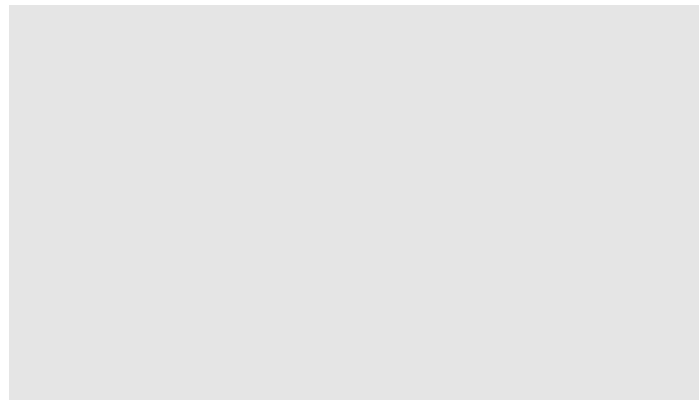


- The Executive Director must give notice of the date, time, and location at least 30 days prior to the hearing date.
- Notice must be publicly posted online and with the City Clerk 7 days prior to the hearing date.





Procedural Due Process



Due Process

The due process rights of the respondent must be protected.

Notice

- Must occur before any fines or penalties imposed
- Must give defendant/respondent knowledge of proceedings (what is at issue, what evidence will be used)

Opportunity to be heard

- Right to defend oneself
- Right to present evidence
- Right to continuance if faced with new issues or claims
- Entitled to full and complete attention of adjudicators



Fair and Neutral Adjudicator(s)

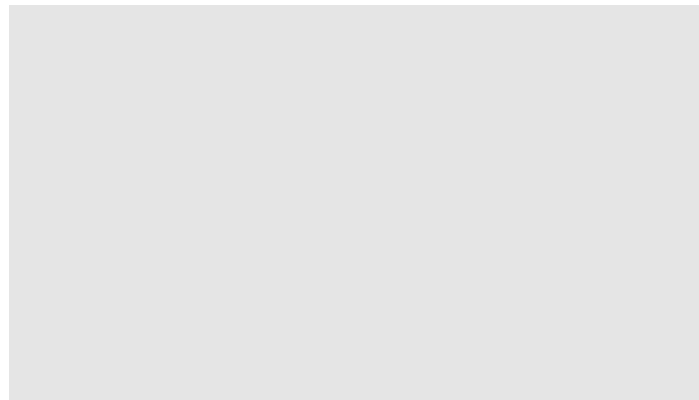
Constitutional guarantee of due process requires a fair decision-making body:

- Must be free from bias for or against any party;
- Cannot have financial interest in outcome;
- Should not discuss amongst selves prior to hearing.





Preliminary Matters



Preliminary Matters



Examples of Preliminary Matters



Whether multiple claims within a single complaint may be scheduled separately



Whether similar complaints filed by separate individuals or entities may be joined



Scheduling of witnesses



Production of documents and issuance of subpoenas



Scheduling of pre-hearing conferences



Disqualification of any member of the Commission from participation in the hearing on the merits, i.e., conflicts of interests, recusal



Any matters not related to the truth or falsity of the factual allegations in the accusation



Timeframes

- **7 DAYS BEFORE THE HEARING:** Preliminary matters must be submitted in writing to the Commission Calendar Clerk for determination by the Hearing Officer.
- **5 DAYS BEFORE THE HEARING:** Any written materials (non-subpoena) must be submitted.



Subpoenas

- Both sides may subpoena witnesses to testify or to bring documents.
- A draft subpoena must be given to Commission staff no later than 14 days before the hearing date.
- Subpoenas may be issued by the Executive Director or the Hearing Officer.



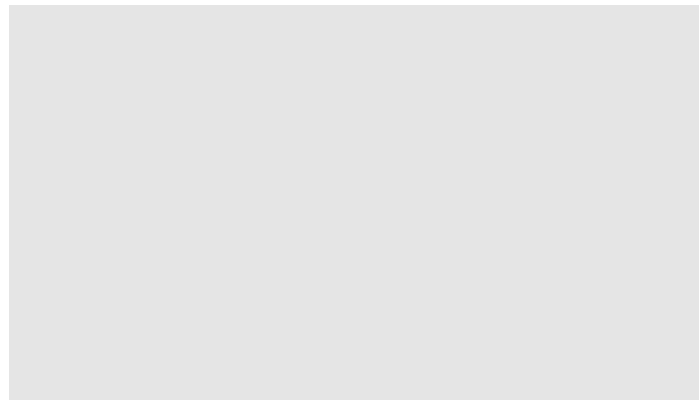
Continuation and Postponement of Hearings

- A postponement may be granted prior to the hearing only upon written request to the Commission Chair or Hearing Officer.
- At the hearing, a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.

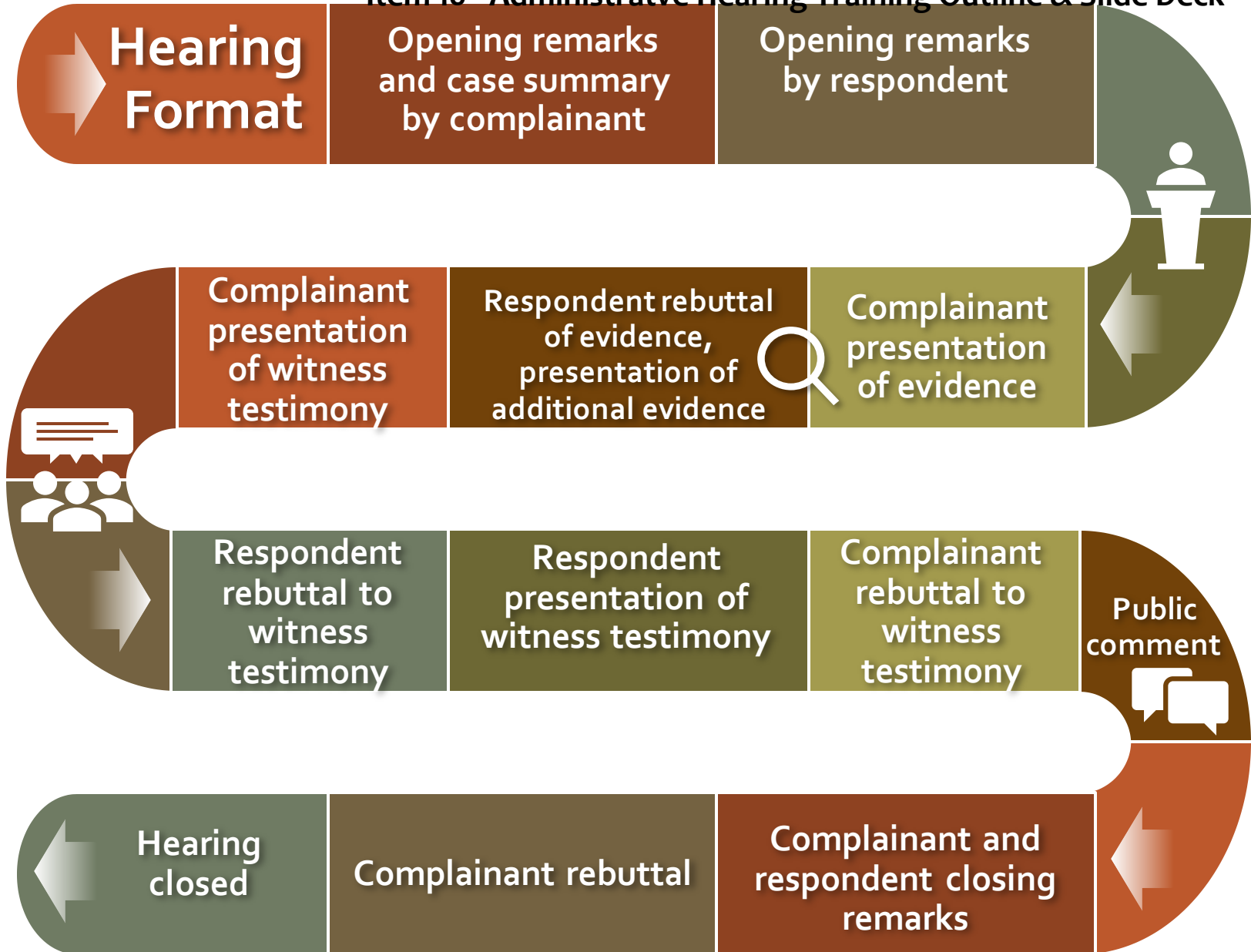




Hearing Procedures



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Ex Parte Contacts Prohibited



"*Ex parte*" communications occur when a commissioner meets or communicates with one or more parties outside the confines of the public hearing process.



Remaining within the Scope

- In some jurisdictions, the hearing body's authority to consider legal challenges to city ordinances or rules is limited.
- Through this practice, the hearing body is able to more effectively focus the proceeding and issue a sound decision.



Evidence



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- The Evidence Code and civil court rules of evidence **DO NOT** apply to administrative proceedings.
- Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.



Decisions by Body



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If procedural rules do not dictate, then the administrative body or the Hearing Officer must:

- Allot time for each side to present oral and written evidence not already submitted;
- Determine when to take public comment and for how long.



Hearsay



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Civil Case

- Hearsay is inadmissible except as provided by law, and there are numerous statutory exceptions and exclusions that allow hearsay evidence to be admitted at trial.

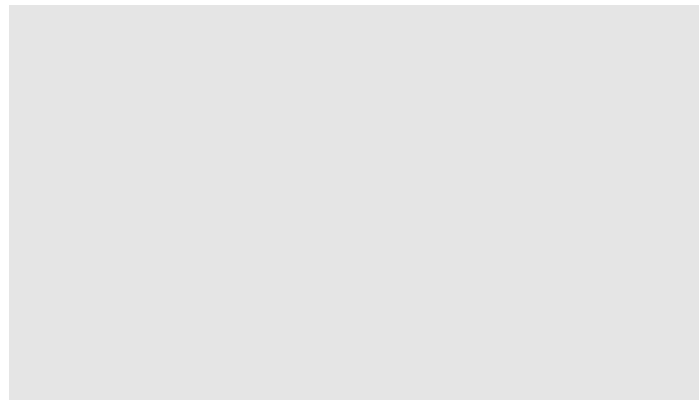
Administrative Hearing

- Hearsay evidence is admissible when supplementing or explaining other evidence.





Findings of Fact and Conclusions



Findings of Fact and Conclusions

Findings of Fact set forth the facts the Hearing Officer found to be true and the conclusions of law they reached regarding those facts.



Findings of Fact and Conclusions: Timeframe

- Must be returned to Executive Director within 14 days of the hearing.
- Executive Director delivers copies to all parties.
- Placed on the agenda for approval at the next regular Commission meeting or a special meeting called by Chair.
- Commission ***must adopt*** factual findings and ***may adopt*** the conclusions in whole or with modifications.





Penalties





Penalty Recommendations

- The full Commission decides whether to accept or modify the recommended penalty.
- Penalty ranges per violation are given in the applicable ordinance.





Determining Penalties

Factors to Consider:

- Seriousness of the violation and extent of the public impact or harm;
- Presence or absence of any intention to conceal, deceive, or mislead;
- Whether the violation was deliberate, negligent, or inadvertent;
- Whether the violation was isolated or part of a pattern;
- Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
- Extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation;
- Degree to which the respondent cooperated with the commission's enforcement activity in a timely manner; and
- Relative experience of the respondent.





Authority to Determine Penalty

- The Commission has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances.
- As long as the penalty is within the range prescribed by the applicable law, the Hearing Officer and Commission may select a penalty that they believe is appropriate given the totality of the circumstances.





Final Order



Finality of Administrative Decisions



A decision must be “final” before any court of appeal will accept and hear it.



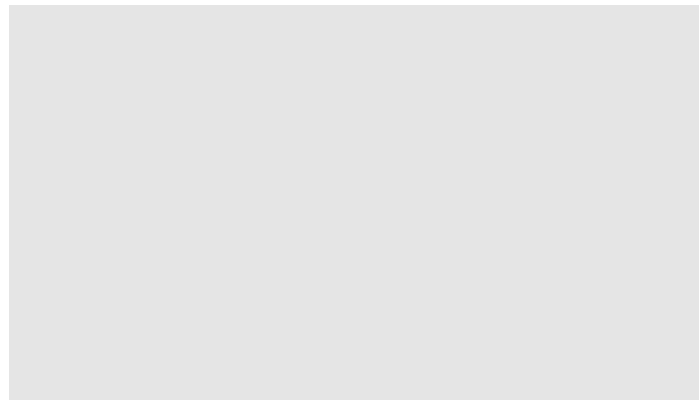
For purposes of finality, an administrative decision must:

- 1) Be final with respect to action by the administrative agency; and
- 2) Effectively conclude the issues.





Court Review



Final Commission Orders Appealable by Court

- Either party can appeal within 90 days.
- Courts look to local municipal administrative procedures, rules and standards.
- Substantial evidence standard.





Resources

[City Charter – Public Ethics](#)
[Commission Enabling Ordinance](#)
[Public Ethics Commission Operations](#)
[Policies](#)
[Enforcement Complaint Procedures](#)
[Enforcement Penalty Guidelines](#)
[New Commissioner Handbook](#)





End of Training

