

Agenda: Item 4

Consideration of Proposed Procedures for Commission Disciplinary and
Qualification Hearings [INFORMATION]

TAXI COMMISSION HEARING PROCEDURES FOR PERMIT APPLICANT CASES

I. APPLICATIONS

- A. The application process begins with the filing of an application. The application shall be received at the Taxi Commission Office and shall be completely filled out. No application shall be deemed received until it is complete.
- B. Taxi Commission staff shall review the application and investigate the facts declared by the applicant under penalty of perjury in his or her application.

II. APPLICANTS DEEMED QUALIFIED

- A. If Taxi Commission staff finds the application to be a true and correct statement of the facts contained therein, and if the applicant meets the qualifications specified in MPC § 1081, the applicant shall be placed on the Commission agenda for a vote by the Commission.

III. APPLICANTS DEEMED UNQUALIFIED

- A. The application shall be sent to a hearing officer for a factual determination of the issues presented if any of the following circumstances are presented:
 - (a) investigation reveals that the applicant may have engaged in fraud, deceit, misrepresentation, or other misconduct in connection with the application process, including submission of fraudulent waybills;
 - (b) investigation reveals that the applicant may be unqualified for any other reason specified in MPC § 1081, including, but not limited to:
 - (i) lack of financial responsibility, compliance with insurance requirements, and ability to maintain of proper financial records
 - (ii) compliance with applicable statutes, ordinances, rules, and regulations
 - (iii) record with other permits issued to operate a motor vehicle for hire either in San Francisco or other jurisdictions;
 - (c) Lack of requisite driving experience as required by MPC §§ 1121 or 1148.1

IV. HEARING OFFICER REFERRAL OF PERMIT APPLICANTS

- A. The Department shall schedule an applicant for factual determination of issues described above before a hearing officer no later than one hundred and twenty (120) calendar days after the applicant has submitted a complete application.
- B. The applicant is entitled to a thirty (30) calendar day continuance of the hearing as a matter of right, if a written request is submitted to the Commission office at least two weeks prior to the hearing. Further and additional continuances shall be granted at the discretion of the quasi-judicial officer.

V. BURDEN OF PROOF

- A. The burden of proof shall at all times remain with the applicant to prove his or her qualifications for the permit.

VI. SUBMISSIONS

- A. The Department shall present the complete application, along with a summary of no more than ten (10) double-spaced pages in length, excluding any evidence the Department intends to present to support the results of its investigation, no less than thirty (30) calendar days prior to the hearing. The department shall serve its submission on the applicant and the hearing officer. The Department shall also include a list of the witnesses, if any, that the Department intends to present at the hearing. Names may be submitted in summary form, but the permit holder may also include declarations from witnesses and any of those declarants may be called as live witnesses.
- B. No later than two weeks prior to the hearing, the applicant may file a written response to the allegations in the complaint and any other information the applicant deems relevant. The response shall not exceed ten double-spaced pages, and may include unlimited exhibits. The response shall include a brief summary of the case and a list of the witnesses, if any, that the permit holder will present at the hearing. Names may be submitted in summary form, but the permit holder may also include declarations from witnesses and any of those declarants may be called as live witnesses.

VI. HEARING OFFICER RECOMMENDATION AND COMMISSION REVIEW

- A. The hearing officer shall submit his or her recommendation to the Commission in accordance with the procedures established in MPC § 1188. The Commission shall review and adopt, modify, or deny the hearing officer's recommendation in accordance with the Commission's Procedures for Hearing Officer Recommendations.

TAXI COMMISSION PROCEDURES FOR REVIEW OF HEARING OFFICER DECISIONS

Section IV.C of the Taxi Commission's Hearing Procedures for Hearing Officer Referrals states:

The Executive Director shall also place the final decision on the Taxi Commission's consent calendar for the next scheduled meeting occurring not less than ten calendar days after entry of the [hearing officer's] decision. The Director shall submit the recording of the hearing and any written materials submitted in connection with the hearing. The Commission will act on the Director's decision and the record presented; it will not rehear the case. The Commission may only modify or overturn the Executive Director's decision by a two-thirds' vote.

Although MPC § 1188 calls for the Director to review the Hearing Officer's recommendation before it comes to the Commission, these proposed procedures do not contain that element of review. The Director brings the complaint to the hearing officer and the recommendation of the Hearing Officer proceeds directly to the Commission.

I. GENERAL PROVISIONS

- (1) As quasi-judicial officers in these proceedings, commission members should not be communicating with parties to a case regarding the substance of the case.
- (2) Public comment is not testimony and is not part of the administrative record. Commissioners shall not let public comment influence their decision-making process.

II. REVIEW OF RECOMMENDED DECISIONS

- (1) Hearing officers shall produce recommended decisions in accordance with Municipal Police Code § 1188.
- (2) The recommended decision shall be placed on the Commission's calendar. The Commission shall adopt, modify, or deny the hearing officer's recommendation, or may remand the matter to the hearing officer for further proceedings.
- (3) A two-thirds majority vote (5 affirmative votes) of the Commission is required to modify or deny the decision. The 5-vote requirement applies even if one or two of the commission members are absent or disqualified from hearing a particular case, or the seats are vacant.

III. REHEARINGS

- (1) Commission members may review the recording of the proceedings before the hearing officer and the written materials in order to assist their decision whether to propose a rehearing.
- (2) Any member of the Commission may make a motion that the case be reheard. No party has a right to a rehearing.
- (3) No rehearing request shall be granted if evidence is presented of continuing violations.
- (4) The President of the Commission may, at his or her discretion, allow the parties to address the Commission on whether or not the case should be reheard before taking a vote on the rehearing. There shall be no additional public comment on the rehearing beyond the public comment already allotted for the line item on the agenda.
- (5) A two-thirds majority vote (5 affirmative votes) of the Commission is required to rehear the case. The 5-vote requirement applies even if one or two of the commission members are absent or disqualified from hearing a particular case, or the seats are vacant.
- (6) If the Commission votes to rehear the case, it shall be scheduled for the next available Commission hearing.
- (7) Prior to the meeting at which the rehearing will occur, all members of the Commission *must* review the recording of the proceedings before the hearing officer and the written materials.
- (8) There shall be no additional briefing allowed for the rehearing.
- (9) If a party claims to have new evidence that reasonably could not have been presented at the original hearing, the President of the Commission may remand the case to the hearing officer for consideration of the new, additional evidence before the case is reheard at the Commission. The hearing officer's determination of the new evidence shall be included with the written materials previously submitted, and shall be considered by the Commission with subsection (6) above.
- (10) There shall be no witness testimony presented at the rehearing without the permission of the President of the Commission.
- (11) At the rehearing, each side—starting with the department—shall have twelve minutes to present its case and three minutes for rebuttal. Members of the Commission may ask questions of the parties through the President, but should avoid interrogating or debating the parties.
- (12) After re-hearing the case, the Commission shall vote. A simple majority vote shall be required for any motion(s) made.

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TAXI COMMISSION HEARING PROCEDURES FOR DISCIPLINARY CASES

I. Complaints

- A. The hearing process begins with the filing of a complaint. The complaint shall include a summary of the case of no more than 10 double-spaced pages, and unlimited exhibits of evidence. A list of witnesses, if any, that the Department intends to present, must be presented at least five business days prior to the hearing. Names may be submitted in summary form, but the Department may also include declarations from witnesses and any of those declarants may be called as live witnesses. The Department shall also submit a set of proposed findings to the quasi-judicial officer prior to the hearing on the complaint.
- B. The hearing shall be scheduled no sooner than thirty (30) calendar days after the complaint is sent to the permit holder.
- C. The permit holder may be entitled to a thirty (30) calendar day continuance of the hearing, if a written request is submitted to the Commission at least two weeks prior to the hearing. Continuances shall be granted at the discretion of the quasi-judicial officer. Continuances shall not be granted if there are continuing violations present in the case.

II. Response

- A. No later than two weeks prior to the hearing, the permit holder may file a written response to the allegations in the complaint and any other information the permit holder deems relevant. The response shall not exceed ten double-spaced pages, and unlimited exhibits. The response shall include a brief summary of the case and a list of the witnesses, if any, that the permit holder will present at the hearing. Names may be submitted in summary form, but the permit holder may also include declarations from witnesses and any of those declarants may be called as live witnesses.

III. Public Comment

- A. When the case appears on the Commission's agenda, the Commission Secretary shall call the item.
- B. The Commission Secretary shall then call for public comment on the item. Unless the President of the Commission rules otherwise, members of the

public shall have three minutes each to address the Commission. The President of the Commission may limit the total amount of time provided for public comment.

- C. Before public comment is taken, the Commission Secretary shall read the following admonition:

“Disciplinary hearings regarding possible permit suspensions or revocations are quasi-judicial proceedings. The decisions of the Commission must be based exclusively on properly admitted evidence. The Commission may not base any factual determinations necessary for its decisions on anything other than such evidence. Information presented through public comment is not evidence and will not be considered by the Commission for those purposes.”

IV. Presentation of the Case

- A. The Department's representative has the burden of proof and shall speak first. The Department's representative and the permit holder shall each have seven (7) minutes to present their case in chief, including the presentation of witnesses. The parties may request, and the President of the Commission in his or her discretion may grant, additional time to the parties if the matter is complex.
- B. There shall be no cross-examination of witnesses as a matter of right, but the opposing party may propose questions for adverse witnesses through the President of the Commission, or the President may allow cross-examination at his or her discretion.

V. Questions from the Commission

- A. After each side has presented its case in chief, the President of the Commission may entertain questions for the parties from the Commission members.

VI. Rebuttal

- A. After the Commission members have concluded their questions, the Department's representative and the permit holder shall each have three (3) minutes to present their rebuttal, if any. The Department's representative shall speak first.

VII. Deliberations

- A. After each side has presented its rebuttal, if any, the President of the Commission may entertain final questions for the parties from the Commission members.
- B. The Commission members shall then conduct their deliberations and, in their discretion, introduce and adopt any motions to dispose of the case.

VIII. Findings

- A. If the Commission votes to impose discipline, the Commission shall adopt findings. The findings may be considered and adopted by the Commission at the same meeting or at a subsequent meeting. The Commission's decision shall take effect on the date of notice to the party of the Commission's findings.

IX. Rehearings

- A. An application for rehearing of a Commission determination may be filed by the permit holder within seven calendar (7) days after the adoption of findings.
- B. The Commission shall act upon an application for rehearing on the next available Commission calendar, but no later than thirty (30) days after the date of filing of the application. If the Commission does not act on the application within the specified thirty (30) days, the application shall be deemed denied and such denial shall be final and conclusive.
- C. The Commission may grant an application for rehearing on only one or both of the following grounds:
 - 1) A subsequent change in the applicable law; or
 - 2) The permit holder has discovered new evidence, material to the case, which the permit holder could not, with reasonable diligence, have discovered or procured prior to the hearing. Repetitive or cumulative evidence shall not satisfy this ground.

An application for rehearing shall be denied if the application contains allegations unsupported by specific references to subparagraphs 1) or 2) above.

- D. When a rehearing is sought on grounds of newly-discovered evidence, such an application must contain an offer of proof, specific in detail, providing:
- 1) The names of witnesses to be produced;
 - 2) A summary of the testimony to be elicited from such witnesses;
 - 3) A description of such documentary evidence as is to be offered;
 - 4) The effect which it is contended such evidence will have on the record and on the prior decision; and
 - 5) A full and accurate statement of the reasons why such testimony or exhibits could not reasonably have been discovered prior to the hearing or produced at the hearing.