

## Agenda: Item 4

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

CITY AND COUNTY OF  
SAN FRANCISCO



TAXI COMMISSION  
MAYOR GAVIN NEWSOM

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JORDANNA THIGPEN, EXECUTIVE DIRECTOR

**TO: Honorable Commissioners**  
**FROM: Jordanna Thigpen**  
**RE: Current and New Hearing Procedures**  
**Date: October 3, 2008**

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Attached please find the following documents:

- (1) Current hearing procedures under existing Taxi Commission Rules. There are two documents: one entitled *Taxi Commission Hearing Procedures* and one entitled *Taxi Commission Review of Hearing Officer Decisions*.
- (2) Current hearing procedures for review of summary suspensions under existing Taxi Commission rules. This document is entitled *Taxi Commission Hearing Procedures (Review of Summary Suspension)*.
- (3) Proposed hearing procedures for Qualification Hearings for permits. This document is entitled *Taxi Commission Hearing Procedures for Qualification Hearings for Applicants*.
- (4) Proposed procedures for hearings involving recommended decisions, disciplinary cases, and summary suspensions. This document is entitled *Taxi Commission Hearing Procedures for Recommended Decisions, Disciplinary Cases, and Summary Suspensions*.

All are being noticed on Friday, October 3, 2008 to meet the 10-day noticing requirement and have been posted in the appropriate section on our website.

# Current

## TAXI COMMISSION HEARING PROCEDURES

### I. Complaint

- A. The hearing process begins with the filing of a complaint. The complaint shall include a brief summary of the case and a list of the witnesses, if any, that the Police Department will present at the hearing. The Department shall also submit a set of proposed findings to the Commission prior to the hearing on the complaint.
- B. The Commission Secretary shall schedule a hearing in front of the Commission no sooner than four weeks after the complaint is sent to the permit holder.
- C. The permit holder is entitled to a one-month continuance of the hearing as a matter of right, if a written request is submitted to the Commission at least two weeks prior to the hearing. Further and additional continuances shall be granted at the discretion of the President of the Commission.

### 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. 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.

### III. Public Comment

- A. When the case appears on the Commission's agenda, the Commission Secretary shall call the item and read a brief summary of the case based upon the summaries submitted by the Department and the permit holder.
- 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 or public comment has been extensive and the party wishes to respond.
- 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.

#### **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 Secretary of the Commission, with the assistance of the City Attorney, shall prepare 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 fifteen (15) days after the adoption of findings or the denial of an application for rehearing.

### IX. Rehearings

- A. An application for rehearing of a Commission determination may be filed by the permit holder within seven (7) days after the adoption of findings.
- B. The Commission shall act upon an application for rehearing within 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 Board 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.

## TAXI COMMISSION 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 Director'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.

This memorandum is provided to clarify and expand on the procedures the Commission will follow in such cases.

**Review by the full Commission is like review at the Supreme Court. It is discretionary—the Commission decides which cases it will hear. There is no right to a rehearing before the Commission.**

(1) THE FIRST STEP IS TO HAVE THE DECISION SEVERED [SEPARATED] FROM THE COMMISSION'S CONSENT CALENDAR.

Any member of the Commission may request that the item be severed and voted on separately. A party may ask that a decision be severed during public comment on the consent calendar, but it will be more useful if the party makes the request in writing to the Commission at least a week prior to the meeting. The request can be a simple letter or a formal brief.

The request should be directed to the entire commission; commission members should not be speaking individually with parties to a case that they may later be judging. 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 sever an item and propose a rehearing.

(2) THE NEXT STEP IS FOR THE COMMISSION TO VOTE, BY A SIMPLE MAJORITY, ON WHETHER TO REHEAR THE SEVERED ITEM.

This step is analogous to the California Supreme Court's decision to grant review of a case or the U.S. Supreme Court's decision to grant certiorari.



The Commission may vote to rehear the item at the same meeting that the item appears on the consent calendar.

The President of the Commission may, in his or her discretion, allow the permit holder and the Department to address the Commission briefly prior to the vote on whether to rehear the case.

(3) IF THE COMMISSION VOTES TO REHEAR THE CASE, THE PRESIDENT SHALL THEN SCHEDULE THE REHEARING FOR A SUBSEQUENT COMMISSION MEETING.

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.

There is no testimony presented at the rehearing without the permission of the President of the Commission.

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 evidence.

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.

(4) THE FINAL STEP IS FOR THE COMMISSION, AFTER REHEARING THE CASE, TO VOTE ON WHETHER TO OVERTURN THE EXECUTIVE DIRECTOR'S DECISION; IT TAKES A TWO-THIRDS' VOTE OF THE COMMISSION (OR 5 VOTES) TO OVERTURN THE DECISION.

The 5-vote requirement applies even if one or two of the commission members are absent or disqualified from hearing a particular cases, or the seats are vacant.

## **TAXI COMMISSION HEARING PROCEDURES (Review of Summary Suspension)**

### **I. Review of Summary Suspension.**

- A. "The [Executive Director of the Taxi Commission] may suspend summarily any permit issued under this Article pending a disciplinary hearing before the [Taxi] Commission when in the opinion of said [Executive Director] the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter." (SF Police Code § 1090(c).)
- B. When a permit has been summarily suspended, the permit holder is entitled to a prompt hearing before the Taxi Commission on whether to continue the suspension pending the resolution of the underlying complaint.

### **II. Opposition**

- A. No later than five days prior to the hearing, the permit holder may file a written opposition to the allegations filed against him or her and any other information the permit holder deems relevant. The opposition shall not exceed ten double-spaced pages. The opposition 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.

### **III. Public Comment**

- A. When the case appears on the Commission's agenda, the Commission Secretary shall call the item and read a brief summary of the case based upon the summaries submitted by the Department and the permit holder.
- 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 or public comment has been extensive and the party wishes to respond.
- 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.

#### **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. The only issue shall be whether the Department has established that the public health or safety requires that the summary suspension be continued in effect pending the resolution of the underlying complaint.

## **VIII. Findings**

- A. If the Commission votes to continue the suspension, the Secretary of the Commission, with the assistance of the City Attorney, shall prepare findings. The findings may be considered and adopted by the Commission at the same meeting or at a subsequent meeting. However, the decision to continue the suspension shall take effect immediately.

Proposed

## **TAXI COMMISSION HEARING PROCEDURES FOR QUALIFICATION HEARINGS FOR PERMIT APPLICANTS**

### **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.
- B. Vote shall be taken by simple majority vote on the Commission's consent calendar.

### **III. Applicants Deemed Unqualified and Applications Presenting Factual Discrepancies**

- 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 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 hearing 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 twenty (20) 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 under penalty of perjury and any of those declarants may be called as live witnesses.
- B. No less than ten (10) calendar days prior to the hearing, the applicant may file a written submission containing any information the applicant deems relevant to the application or the results of the investigation. The submission shall not exceed ten (10) double-spaced pages, and may include unlimited exhibits. The submission shall also contain a list of the witnesses, if any, that the applicant will present at the hearing. Names may be submitted in summary form, but the applicant may also include declarations from witnesses under penalty of perjury 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 recommended decision on the application 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 *Hearing Procedures for Recommended Decisions, Disciplinary Cases, and Summary Suspensions*.



**TAXI COMMISSION HEARING PROCEDURES  
FOR RECOMMENDED DECISIONS, DISCIPLINARY CASES, AND  
SUMMARY SUSPENSIONS**

**I. General Provisions**

- A. Quasi-judicial officers in these proceedings should not be communicating with parties to a case regarding the substance of the case. Any correspondence regarding the substance of a case directed to or received by any quasi-judicial officer shall become part of the public record and shall be copied to both parties.
- B. Public comment is not testimony and is not part of the administrative record. Quasi-judicial officers shall not let public comment influence their decision-making process.
- C. For purposes of this section, "quasi-judicial officers" refers to the hearing officer or the Commissioners hearing or reviewing a particular case.
- D. "Quasi-judicial officer" for procedural purposes shall mean the hearing officer or the President of the Commission.

**II. Summary Suspensions**

- A. The [Executive Director of the Taxi Commission] may suspend summarily any permit issued under this Article pending a disciplinary hearing before the [Taxi] Commission when in the opinion of said [Executive Director] the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter." (SF Police Code § 1090(c).)
- B. When a permit has been summarily suspended, the permit holder is entitled to a prompt hearing before the Taxi Commission on whether to continue the suspension pending the resolution of the underlying complaint.
- C. The Executive Director shall serve a letter of suspension describing the allegations giving rise to the suspension upon the permit holder, either personally or by registered mail to the permit holder's address on file with the Commission, and take possession of the permit. The permit holder shall not operate said permit during the pendency of the summary suspension. The Director shall prepare a written summary of the charges giving rise to the summary suspension and shall serve the written

summary on the permit holder at least five (5) calendar days prior to the hearing.

- D. No later than five days prior to the hearing, the permit holder may file a written opposition to the allegations contained in the letter of suspension containing any information the permit holder deems relevant. The opposition shall not exceed ten double-spaced pages. The opposition 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.
- E. Whether or not the Commission votes to continue the summary suspension, a complaint on the facts giving rise to the summary suspension may be filed in accordance with these Procedures.

### **III. Procedures Applicable to all Disciplinary Cases**

#### **A. Disciplinary Complaints**

1. A disciplinary 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.
2. The hearing shall be scheduled no sooner than thirty (30) calendar days after the complaint is sent to the permit holder unless the parties agree to a shorter timeline.
3. The defendant may be entitled to a thirty (30) calendar day continuance of the hearing, if a written request is submitted to the quasi-judicial officer 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.

#### **B. Response**

1. No later than two weeks prior to the hearing, the defendant 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 defendant will present at the hearing. Names may be submitted in summary form, but the defendant may

also include declarations from witnesses and any of those declarants may be called as live witnesses.

### **C. Public Comment**

1. When the case appears on the Commission's agenda, the Commission Secretary shall call the item.
2. The Commission Secretary shall then call for public comment on the item prior to the parties' presentation. Members of the public have up to three minutes each to address the Commission, at the discretion of the quasi-judicial officer. The quasi-judicial officer may limit the total amount of time provided for public comment.
3. 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."

### **D. Presentation of the Case**

1. The Department's representative has the burden of proof and shall speak first. The Department's representative and the defendant shall each have seven (7) minutes to present their case in chief, including the presentation of witnesses. The parties may request, and the quasi-judicial officer in his or her discretion may grant, additional time to the parties if the matter is complex.
2. 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 quasi-judicial officer, or the quasi-judicial officer may allow cross-examination at his or her discretion.

## **IV. Procedures Specific to Disciplinary Cases Heard by Hearing Officers**

### **A. Questions from the Hearing Officer**

1. After each side has presented its case in chief, or during the presentation, the hearing officer may entertain questions for the parties.

## **B. Rebuttal**

1. After the hearing officer has concluded his or her questions, the Department's representative and the defendant shall each have three (3) minutes to present their rebuttal, if any. The Department's representative shall speak first.

## **C. Deliberations**

1. After each side has presented its rebuttal, if any, the hearing officer may entertain final questions for the parties.
2. The hearing officer shall issue a written proposed decision, which shall operate as a recommendation, to the Commission within ten (10) business days after the conclusion of the hearing. The proposed decision shall include written findings and recommendations regarding penalties.

## **D. Calendaring of the Hearing Officer's Recommendation**

1. The President of the Commission shall place the hearing officer's recommendation on the Commission's consent calendar for the next scheduled meeting occurring not less than ten (10) calendar days after receipt of the recommendation.
2. 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 of the Commission is required to reject the factual basis for the hearing officer's recommendation. The Commission may remand the matter or re-hear the matter if it rejects the factual basis.
4. For disciplinary cases, the Commission may vote to modify the hearing officer's recommended penalty by a simple majority without rehearing the case, as long as the Commission accepts the factual basis for the hearing officer's recommendation.
5. For recommended decisions on permit applications, the Commission may vote to modify the hearing officer's recommended decision by imposing conditions on the permit or applicant by a simple majority without rehearing the case, as long as the Commission accepts the factual basis for the hearing officer's recommendation.

## **V. Procedures Specific to Disciplinary Cases Heard at the Commission**

### **A. Questions from the Commission**

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

### **B. Rebuttal**

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

### **C. Deliberations**

1. 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.
2. The Commission members shall then conduct their deliberations and, in their discretion, introduce and adopt any motions to dispose of the case.

## **VI. Findings**

- A. If the Commission votes to continue a summary suspension, the Commission shall adopt findings. The findings may be considered and adopted by the Commission at the same meeting or at a subsequent meeting. However, the decision to continue the suspension shall take effect immediately.
- B. 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.
- C. If the Commission is voting on an application for a permit, the final vote and any conditions attached to the permit or applicant shall be recorded in the Commission's official minutes and findings shall not be required. The Commission's decision shall take effect on the next business day immediately following the vote.

## VII. 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.