

CHAPTER ONE: ORGANIZATION, FUNCTIONS, AND GENERAL PROVISIONS

Subchapter 1.12: Administrative Hearings

1.12.010 Scope.

(a) The administrative hearing procedure herein shall apply to any proceeding (i) under the Town of Colma Nuisance Abatement Ordinance, or (ii) any matter which requires a full evidentiary hearing but where the city council has declined to exercise jurisdiction.

(b) The administrative hearing procedure herein shall not apply to appeals from disciplinary actions, which shall be governed by the Town of Colma Policies and Personnel Manual; grievances, which shall be governed by the Town of Colma Policies and Personnel Manual; appeals to the city council from an administrative decision made by the city manager, city planner, or city engineer, which shall be governed by section 1.02.140 of this Code; and public hearings before the city council.

[History: formerly § 1.1201; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.020 Setting an Administrative Hearing.

Upon receipt of a request for an Administrative Hearing, the City Manager shall appoint the Hearing Officer, set the date for the hearing, and serve written notice of hearing on all parties.

[History: formerly § 1.1202; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.030 Selection of Administrative Hearing Officer.

(a) The City Manager may contract with any organization or governmental entity that provides alternative dispute resolution services in San Mateo County to provide a hearing officer for an administrative hearing. The hearing officer shall be selected by the organization or governmental entity.

(b) Alternatively, the City Manager may contract directly with any person who serves as a Hearing Officer for the County of San Mateo, or any city within the County of San Mateo, to serve as a hearing officer provided that (1) such person shall have had two-years' training or experience in conducting or appearing at administrative hearings, and (2) no person shall serve as a hearing officer in the Town of Colma more than one time only.

[History: formerly § 1.1203; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 596, 9/11/02; ORD. 638, 12/14/05; ORD. 676, 4/8/09; ORD. 722, 6/12/13]

1.12.040 Disqualification of Hearing Officer.

(a) The hearing officer shall be disqualified if any one or more of the following is true:

- (1) The hearing officer, a spouse of the hearing officer, or a person within the third degree of relationship to either of them, has personal knowledge of disputed evidentiary facts in the proceeding;
 - (2) The hearing officer has served as lawyer for any violator or property owner involved in the proceeding;
 - (3) The hearing officer has served as lawyer in any other proceeding involving the same issues;
 - (4) The hearing officer has represented or advised the Town concerning the factual or legal issues involved in the proceeding.
 - (5) The hearing officer, a spouse of the hearing officer, or a child or parent of either of them, has a material financial interest in the outcome of the proceeding
- (b) It shall not be grounds for disqualification that the hearing officer:
- (1) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group;
 - (2) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in (b) above;
 - (3) Has participated in the drafting of laws, ordinances or regulations, or in the effort to pass or defeat such laws, ordinances or regulations, the meaning, effect or application of which is in issue in the proceeding unless the hearing officer believes that his or her prior involvement is so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.
- (c) On the Hearing Officer's own motion or on the written request of any party, supported by a written declaration setting forth the facts constituting the grounds for disqualification, the Hearing Officer shall determine whether or not to disqualify himself or herself. If a Hearing Officer who should disqualify himself or herself refuses or fails to do so, the objecting party may, within five (5) days thereafter, file with the City Manager a written request for an independent determination and shall serve a copy thereof on all other parties to the hearing. The City Manager shall thereupon appoint another hearing officer to rule on the objection. An objection that is not timely and properly filed and served shall be deemed waived.

[History: formerly § 1.1204; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.050 Peremptory Challenge.

- (a) Any party may peremptorily challenge the Hearing Officer by filing with the City Manager within five (5) days of service of the notice of appointment of the Hearing Officer, and by serving a copy thereof on all parties, a written declaration stating that the party believes that he or she cannot have a fair and impartial hearing before that Officer. Upon receipt of a peremptory timely challenge under this provision, the City Manager shall appoint another

Hearing Officer. A party may exercise his right to a peremptory challenge under this section only once.

(b) A peremptory challenge that is not timely and properly filed and served shall be deemed waived.

[History: formerly § 1.1205; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.060 Notice of Administrative Hearing.

(a) The notice of an administrative hearing shall contain the date, time and place of the hearing.

(b) The hearing shall be set for a date not less than fifteen days or more than sixty days from the date of the notice of hearing unless the City Manager determines that the matter is urgent or that good cause exists for an extension of time. Whenever feasible, the City Manager shall consult with the persons or officers named or affected by the hearing regarding available dates for the administrative hearing.

(c) The notice of administrative hearing may be served by first class mail, postage prepaid, on the person on whom it is to be made at the address last given by that person on a document filed with the Town, otherwise to the address where that person resides or has his office, except that once a respondent appears in an administrative hearing with an attorney, service shall be made by mail on the respondent's attorney.

[History: formerly § 1.1206; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05; ORD. 722, 6/12/13]

1.12.070 Subpoenas.

(a) The Administrative Hearing Officer shall, if legally authorized, issue subpoenas at the request of either party made at least ten (10) days prior to the commencement of the hearing or fifteen (15) days if the subpoena also directs the witness to bring documents. The request shall be in writing and shall include the identity of the witness or documents to be subpoenaed and shall briefly indicate the nature and relevancy of the testimony or contents. After the commencement of such hearing, subpoenas shall be issued only in the discretion of the Hearing Officer.

(b) The party requesting the subpoena shall be responsible for its service and shall serve it a reasonable time before the hearing.

[History: formerly § 1.1207; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.080 Pre-hearing Disclosures and Conferences

(a) The Hearing Officer may conduct a pre-hearing or post-hearing conference, in person or by telephone or other electronic means, to facilitate the conduct of the hearing.

(b) Upon the request of any party, the Hearing Officer may order each party to serve upon the other party and submit to the Hearing Officer a list of all witnesses and a copy of all exhibits, and written arguments on a schedule satisfactory to the Hearing Officer. Neither party will be permitted to call during the hearing a witness not identified pursuant to this section nor use any exhibit not provided pursuant to this section unless that party can show that he or she could not reasonably have anticipated the prior need for such witness or exhibit.

[History: formerly § 1.1208; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05; ORD. 722, 6/12/13]

1.12.090 Ex Parte Communications.

(a) A party, representative of a party, city employee, or council member shall not communicate directly with the Hearing Officer regarding the merits of a contested matter except:

- (1) At the hearing;
- (2) With the consent of all other parties or their respective representatives;
- (3) In the presence of all other parties or their respective representatives;
- (4) In writing with a copy thereof furnished to all other parties or their respective representatives.

(b) Nothing herein shall prohibit the City Manager or designee from contacting the Hearing Officer to schedule a hearing or to make arrangements for a hearing.

[History: formerly § 1.1209; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.100 Conduct of Hearing.

(a) The hearing shall proceed in the following order unless the Hearing Officer directs otherwise:

- (1) Opening statement by the Town;
- (2) Opening statement by the opposing party;
- (3) Evidence by the Town;
- (4) Evidence by the opposing party;
- (5) Rebuttal evidence by the Town;
- (6) Oral argument by the Town;
- (7) Oral argument by the opposing party;

- (8) Rebuttal argument by the Town.
- (b) Oral evidence shall be taken only on oath or affirmation.
- (c) Each party shall have the right to be represented by an attorney; to call and examine witnesses; to introduce exhibits; to cross-examine on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the opposing party does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.
- (d) The Hearing Officer shall rule on the admission and exclusion of evidence. All objections to the admission of evidence shall be made at the time the evidence is presented, or the objection shall be deemed waived. The Hearing Officer may enter an order to protect all witnesses from harassment, badgering, argumentative questions, which inquire into privileged matters or other improper questions or treatment.
- (e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection on civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded. Evidence of prior misconduct of the employee is relevant and admissible.
- (f) Copies of documents which are true and accurate copies shall not be inadmissible merely because they are not certified or verified copies.
- (g) A record must be made to preserve the matter for judicial review. The City Manager shall determine the method of making a record, which could be by stenographer or audio tape. The record shall include each and every piece of documentary or real evidence admitted.
- (h) During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.
- (i) No still photographs, moving pictures, or television pictures shall be taken during a hearing.
- (j) The Hearing Officer may grant a continuance for any reason he or she believes to be important to reaching a fair and proper decision.

[*History:* formerly § 1.1210; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.110 Language Assistance.

The City shall, at its own expense, provide reasonable language assistance to material witnesses.

[*History:* formerly § 1.1211; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]

1.12.120 Burden of Proof; Statement of Decision.

Except as otherwise provided by law, the burden of proof shall be by a preponderance of the evidence and shall be based on evidence in the record. After hearing all evidence and argument, the Hearing Officer shall render a written Statement of Decision explaining the basis for the decision. The Hearing Officer shall render its Statement of Decision as soon after the conclusion of the hearing as possible, but no later than thirty (30) calendar days after conducting the hearing, whichever is later, unless otherwise stipulated by the parties.

[*History:* formerly § 1.1212; ORD. 495 7/10/96; ORD. 521, 12/10/97; ORD. 638, 12/14/05]