

## ADMINISTRATIVE APPEALS

### § 30.040 APPEAL PERMITTED.

(a) Any party who is harmed by any action or decision of any agency or major organizational unit of the city concerning an administrative decision of a city official or officials from which an appeal is not otherwise provided may appeal the decision. The party who wishes to appeal is referred to as the “appellant.” An independent hearing examiner, who must be a member in good standing of the State Bar of South Dakota, shall be assigned to hear the appeal.

(b) Appeals shall be commenced by filing a written notice of appeal with the responsible agency or major organizational unit either in person or postmarked within 15 days of the decision. The written notice of appeal shall be printed legibly or typed and contain the following information:

(1) The reasons the appellant believes the administrative citation or decision is objectionable, incorrect or illegal;

(2) The amount and type of claim or dispute involved and the time during which it accrued or occurred;

(3) The name, address and telephone number of the appellant;

(4) The number of the citation being appealed, if applicable;

(5) A statement indicating whether the appellant desires the administrative appeal hearing to be open or closed to the public. All administrative appeal hearings are presumed to be open to the public. If either party requests a hearing that is closed to the public, the party requesting the closed hearing must present good cause to the hearing examiner that the public interest in having an open hearing is outweighed by the privacy interest involved in a particular case or that a closed hearing is legally required based upon the nature of the evidence to be presented at the administrative appeal hearing;

(6) If the appellant is to be represented by a legal representative, the name, address and telephone number of the representative; and

(7) The signature of the appellant, legal representative and/or corporate agent.

(c) A processing fee of \$50 shall be paid by cash, check or certified funds simultaneously with the filing of the notice of appeal. Any party who requests a hearing to contest an administrative citation and/or decision and is financially unable to pay the processing fee may file a request for a hardship waiver in lieu of the processing fee. The request for hardship waiver must be filed simultaneously with the filing of the notice of appeal. The party requesting the hardship waiver must submit a sworn affidavit, together with any supporting documents, demonstrating to the satisfaction of the independent hearing examiner the party’s financial inability to deposit with the city the full amount of the processing fee. Written proof of financial hardship at a minimum must include tax returns, financial statements, bank account records, salary records or similar documentation demonstrating that the party is unable to pay the processing fee. The hearing examiner shall issue a written decision specifying the reasons for

granting or denying a hardship waiver. The decision of the independent hearing examiner regarding the hardship waiver shall be final and shall be mailed by first class mail to the party requesting the waiver. If the request for a hardship waiver of the processing fee is denied, the party shall pay the \$50 processing fee within five days of the written decision or prior to the administrative appeal hearing, whichever occurs first. If the processing fee is not paid in full pursuant to these provisions, the request for hearing shall be deemed incomplete and waived and the administrative decision shall be deemed final. The processing fee is not refundable except as provided in § 30.045. Compliance with the above time limit, notice of appeal contents and payment of the processing fee or granting of a hardship waiver shall be jurisdictional prerequisites to any appeal. Failure to comply with any of these requirements shall be deemed to waive the right to a hearing.

(d) If the appellant complies with the jurisdictional requirements for an appeal, then the city will take no further action to enforce the fine, penalty or result until the hearing examiner renders a final decision. However, the provisions for prior notice and hearing may be dispensed with when, in the opinion of the director of the responsible agency or major organizational unit of the city, immediate action is necessary to summarily abate a dangerous condition on public or private property or there is an imminent threat to life or safety on public or private property. The director shall take only such action as is reasonably necessary to summarily abate the danger, and then the city will take no further action to enforce the fine, penalty or result until the hearing examiner renders a final decision.

(e) The director of the responsible agency or major organizational unit, or his or her designee, shall immediately deliver a copy of the appeal to the city attorney who will act as legal counsel.

(1992 Code, § 2-60) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

#### **§ 30.041 TIME OF HEARING AND NOTICE.**

A public hearing, or a closed hearing if the hearing examiner determines it is necessary, shall be held on all appeals within 30 days after the filing of the appeal, unless a later date is scheduled by the hearing examiner upon a showing of good cause why the matter should be scheduled beyond that date. The city attorney's office shall cause written notice of the date, time and place of the hearing to be served upon the appellant by personal service or certified mail to the address set forth in the notice of appeal at least 15 days before the hearing date. Simultaneously, the notice of hearing may be sent by first class mail. If the notice of hearing is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the notice of hearing sent by first class mail is not returned.

(1992 Code, § 2-61) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

#### **§ 30.042 HEARING PROCEDURES.**

The following rules shall govern the procedures for an administrative hearing.

(a) Hearings and administrative appeals shall be governed by the rules of civil procedure and the rules of evidence as set forth in the South Dakota Codified Laws (SDCL). However, the foundational requirements of SDCL 19-16-10 and SDCL 19-16-12 will not be required as long as the hearing examiner is reasonably satisfied regarding the source of the document(s).

- (b) Oral evidence shall be taken only on oath or affirmation.
- (c) The hearing examiner shall administer oaths or affirmations to witnesses.
- (d) The city bears the burden of proof at the hearing. The standard of proof to be used by the hearing examiner is by a preponderance of the evidence.
- (e) The proponent of any testimony to be offered by a party or witness who does not proficiently speak the English language shall provide an interpreter. The interpreter shall be approved by the independent hearing examiner conducting the proceeding as proficient in the English language and the language in which the witness will testify. The cost of the interpreter is to be paid by the party providing the interpreter.

(1992 Code, § 2-62) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

### **§ 30.043 RIGHTS OF PARTIES AT HEARING.**

The appellant, the major organizational unit or agency, and any other party to an appeal shall have these rights among others:

- (a) To call and examine witnesses on any matter relevant to the issue of the hearing;
- (b) To introduce documentary and physical evidence;
- (c) To cross examine opposing witnesses on any matter relevant to the issues of the hearing;
- (d) To rebut evidence;
- (e) To subpoena witnesses to appear and give testimony on that party's behalf or to produce records, books, papers and documents relating to any matters related to the hearing. Any application for a subpoena shall be submitted to the hearing examiner for consideration at least ten days in advance of the hearing. The hearing examiner shall not unreasonably refuse to issue the requested subpoena. Any subpoena must be issued and served no later than five days before the scheduled time of the hearing. All costs related to the subpoena, including the witness fee and mileage fee at the rate provided by statute, SDCL ch. 19-5, shall be paid by the party requesting the subpoena;
- (f) Any party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided; and
- (g) The hearing examiner shall cause to be made a record of the hearing, either stenographically or by sound recording, and shall make available a recording of the hearing to any person upon request and payment in advance of the estimated cost of the recording.

(1992 Code, § 2-63) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

### **§ 30.044 DECISION.**

After each appeal hearing, the hearing examiner shall perform the following:

- (a) Make written findings of fact; and

(b) Based upon the written findings, sustain, remand for further hearing or action or rescind the complained action or decision. The hearing examiner has the discretion to waive the payment of any reinstatement or late penalty fee.

(1992 Code, § 2-64) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

**§ 30.045 REPORT, COSTS.**

A written report of the decision, including the findings of fact, shall be served either in person or by certified mail upon the appellant and the major organizational unit or agency within 15 working days from the date the appeal hearing is concluded. The city and the appellant shall bear their own respective costs of the appeal proceeding, except as specifically provided herein. If the hearing examiner determines that the appellant has prevailed at the hearing, then the appellant's \$50 processing fee shall be refunded. The decision of the hearing examiner shall be final.

(1992 Code, § 2-65) (Ord. 70-96, passed 6-17-1996; Ord. 53-11, passed 7-11-2011)

**§ 30.046 SUBJECT TO JUDICIAL REVIEW.**

The final decision of the hearing examiner may be subject to judicial review as provided by law. If judicial review has been commenced by the aggrieved party within 30 days after the final decision has been entered by the hearing examiner, or as otherwise provided by law, the city will take no further action to enforce the fine, penalty or result until the civil action is completed with the exception of those matters which require immediate abatement as set forth in § 30.040.

(1992 Code, § 2-66) (Ord. 70-96, passed 6-17-1996; Ord. 43-07, passed 3-5-2007; Ord. 53-11, passed 7-11-2011)