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### **5.56.130 Appeals.**

- A. An applicant for a tobacco retailer's license, or a licensee may file an appeal from the following:
  - 1. The denial of an initial application for, or application for renewal of, a tobacco retailer's license;
  - 2. The revocation or suspension of a tobacco retailer's license.
- B. The appeal must be in writing on a form provided by the city, shall state the specific reasons for the appeal and the grounds asserted for relief, and be accompanied by a nonrefundable appeals processing fee set by city council resolution. The appeal shall be filed with the city clerk within ten calendar days of receipt of the notice providing the grounds for the appeal. The failure to file an appeal within the time or in the manner prescribed in this section, or to include the appeals processing fee, waives the right to appeal.
- C. The appeals processing fee shall be set by resolution of the city council, as amended from time to time.

(Ord. No. 708, § II, 11-24-2009)

### **5.56.140 Hearing before hearing officer.**

- A. Upon timely receipt of a written request for a hearing, the city clerk shall schedule a hearing which shall be held no later than thirty calendar days after receipt of the request for hearing.
- B. The city clerk shall serve a notice of hearing on the licensee at least ten calendar days prior to the scheduled date of the hearing.
- C. The chief shall have the burden of proof during the hearing, and shall prove by a preponderance of the evidence that the violations leading to suspension or revocation, or denial of the application, exist.
- D. At the conclusion of the hearing, the hearing officer shall prepare a written decision which either grants or denies the appeal and contains findings of fact and conclusions of law. The written decision shall be filed with the city clerk not later than seven calendar days following the date on which the hearing is closed. The city clerk shall, within three days of the filing of such decision, serve the applicant or licensee with notice and copy of the written decision.
- E. The provisions of the California Administrative Procedure Act (Government Code § 11500 et seq.), and the formal rules of evidence do not apply at the hearing. Any and all evidence which the chief or hearing officer deems reliable, relevant and not unduly repetitious may be considered.

(Ord. No. 708, § II, 11-24-2009)

### **5.56.150 Finality of determination.**

- A. With respect to appeals from the denial of an initial application for a tobacco retailer's license, the hearing officer's decision is final upon service of the hearing officer's decision on the appellant.
- B. With respect to an appeal from the denial of a renewal of a tobacco retailer's license, or from the revocation or suspension of a tobacco retailer's license, the hearing officer's decision is final ten days after service of the hearing officer's decision on the appellant, unless city council review is requested either by the chief or appellant.

(Ord. No. 708, § II, 11-24-2009)

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### **5.56.160 Request for review by city council.**

- A. To request city council review of the hearing officer's decision, the applicant for a license, license holder, or chief shall file a written request with the city clerk within ten days following the date of service of the hearing officer's decision. The request for review shall state in detail the reasons for review and the error alleged in the hearing officer's decision, and include a copy of the hearing officer's decision attached to the request for review, and an appeals processing fee as set by city council resolution.
- B. Upon receipt of a request for review by city council, the city clerk shall schedule city council review not later than thirty calendar days following the date of filing of the notice of appeal. The city clerk shall provide notice of the time and date of the hearing to the appellant at least ten days in advance. The city council shall be authorized to deny the introduction of evidence and decide the matter after oral argument presented during the hearing, to admit supplementary evidence with respect to challenges or particular findings, or reject the findings and conclusions and conduct a de novo hearing. The determination by the city council granting or denying the appeal shall be final and shall be accompanied by findings of fact and conclusions of law, which may consist of an adoption by reference of those by the hearing officer.
- C. The city council is authorized to order the issuance or renewal of a license, may order the revocation of the license, suspend the license or order the license to remain in effect upon such terms and conditions as in the discretion of the city council are necessary and appropriate.

(Ord. No. 708, § II, 11-24-2009)