Final Guidelines For Deemed Approved Ordinance Fee Waiver

Section I: Background
The owner of the Deemed Approved Off-Sale Alcohol Use is required to pay an annual fee to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use Education and Outreach Program and the cost of the City Attorney. This annual fee shall be billed by and paid to the Office of the Treasurer and Tax Collector, which shall deposit the monies collected in the Deemed Approved Off-Sale Alcohol Continuing Project Account. In the event that the owner of the Deemed Approved Off-Sale Alcohol Use fails to pay the fee during a given fiscal year, the Office of the Treasurer and Tax Collector shall notify the Department of Public Health (DPH), which may request that the City Attorney pursue collection of the penalties. The license fee shall be paid annually on or before March 31, in accordance with the provisions of Section 76.1 of the Business and Tax Regulations Code.

Upon the request of the owner of a Deemed Approved Off-Sale Alcohol Use, the Department of Public Health may waive payment of the annual fee provided that the owner can show to the satisfaction of the Department of Public Health all of the following:
(1) That the Deemed Approved Off-Sale Alcohol Use has been under the same ownership for not less than the previous three years;
(2) That the annual fee for the Deemed Approved Off-Sale Alcohol Use has been paid in a timely manner for not less than the previous three years; and
(3) That the Deemed Approved Off-Sale Alcohol Use has not been the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter.

These guidelines outline the process for requesting the fee waiver, as well as the administrative process of the review and approval or denial of the request. The request for the fee waiver is free. There is no cost associated with the application and review process.

Section II: Completing the application for fee waivers
The owner of the Deemed Approved Off-Sale Alcohol Use requesting a fee waiver must complete the H73 Fee Waiver form, available here:
https://www.sfdph.org/dph/comupg/oprograms/CHEP/alcoholOrdInfo/DAO.asp. All sections of the form must be completed and signed in order to process the request. This includes:

- Registered owners name
- Doing Business As (DBA)
- Business Account Number (BAN)
- H73 Number
- Alcohol Beverage Control (ABC) License Number
• Certify that the business has been under the same ownership for not less than the previous three years
• Certify that business has paid the annual fee in a timely manner for not less than the previous three years
• Certify that the business has not been the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter
• The date of the request
• The telephone number of the owner making the request
• The email of the owner making the request
• Print the full name of the owner making the request
• The signature of the owner making the request

When signing the fee waiver application, the owner understands that the request is subject to review by the Department of Public Health and if denied the Tax Collector may assess additional fees, taxes and penalties. The owner further understands that misrepresentation of information is subject to a penalty of up to $500 (SF Business and Tax Regulations code, Section 6.17-3), and other penalties legally available. Any misrepresentation will lead to immediate denial of the request.

Mail the fee waiver form with original signature to:
San Francisco Department of Public Health
25 Van Ness Avenue, Suite 500
SF, CA 94102
ATTN: Michael Paquette/DAO
Or scan the fee waiver form with original signature to: H73.DAO@sfdph.org

All application to request a fee waiver in the next calendar year, and must be received on or before the fourth Friday in August in order to process the request. For example, applications submitted on or before August 30, 2019 will be reviewed for possible waiver in 2020.

Section III: Review process

Applications will be processed on a first come, first served basis and will be reviewed for completeness. Any application that has missing or incorrect information will be considered void and will not be processed. Where the Department of Public Health has an electronic mail address for the responsible party, it will send a copy of its written submittals to that party by electronic mail. The owner is encouraged to reply to the email to ensure that confirmation of receipt of the email. Where the Department of Public Health does not have an electronic address for the responsible party, it will follow-up with a phone call to ensure confirmation.
The Department of Public Health will have 45 days to review the application and inform the owner of the determination. The following information must be verified before a fee waiver can be issued.

<table>
<thead>
<tr>
<th>Items under review for fee waiver</th>
<th>Verification Process</th>
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<tbody>
<tr>
<td>The Deemed Approved Off-Sale Alcohol Use has been under the same ownership for not less than the previous three years</td>
<td>Tax Collectors Office Database</td>
</tr>
<tr>
<td>The annual fee for the Deemed Approved Off-Sale Alcohol Use has been paid in a timely manner for not less than the previous three years</td>
<td>Tax Collectors Office Database</td>
</tr>
<tr>
<td>The Deemed Approved Off-Sale Alcohol Use has not been the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter</td>
<td>DPH Database that documents data on Police IMPACT Inspections, Tobacco Minor Decoy Program, and DPH staff Educational Site Visit forms</td>
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<tr>
<td>City Department-referred complaint will be considered for the following areas for not less than the previous three years:</td>
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<td>• Signed Clerk Affidavit</td>
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<td>• Sales of alcohol to anyone under the age of 21</td>
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<tr>
<td>• Sales of tobacco to anyone under the age of 21</td>
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<tr>
<td>• Theft, assaults, or batteries on premises</td>
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<tr>
<td>• Sale or receipt of stolen good on premises</td>
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<td>• Illegal sale of firearms on premises</td>
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<td>• Illegal drug activities on premises</td>
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<td>• Drug Paraphernalia sold on premises</td>
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<td>• Gambling on premises</td>
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<tr>
<td>• DAO Operating Standards Posted</td>
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<tr>
<td>• ABC License Posted</td>
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<tr>
<td>• No open Container Signs Posted</td>
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After the above criteria has been verified and met, the Department of Public Health staff shall determine that the fee will be waived and issue a formal letter informing the owner of the waiver. Where the Department of Public Health has an electronic mail address for the owner, it will send a copy of its letter to that party by electronic mail. The owner is encouraged to reply to the email to ensure that confirmation of receipt of the email. Where the Department of Public Health does not have an electronic address for the responsible party, it will follow-up with a phone call to inform the business. The Department of Public Health can make a copy of the letter available for pickup by the owner at 25 Van Ness Avenue, Suite 500. Or, on request of the owner, the Department of Public Health may send a copy of the letter through mail delivery address listed on the application. The Department of Public Health will contact the Office of
the Treasurer and Tax Collector to inform them that the DAO annual fee will be waived indefinitely.

During the review process, if the Department of Public Health find that the business does not meet the criteria set forth in these guidelines, the fee waiver will be denied and will issue a formal letter informing the business. Owners wishing to appeal the denial can follow the process below for appeal.

**Section IV: Appeal process for the Denial of a Waiver**

The Community Health Equity & Promotion Branch will work in partnership with the Environmental Health Branch of the Population Health Division to support the hearing process for owners who would like to have to appeal their denial of the waiver. These rules govern the administration of Director’s Hearings held by the Department of Public Health. These procedures were revised to reflect changes to Rule 2, Rule 10(c), and Rule 14 regarding changes to the usual hearing day, the timing of pre-hearing submittals and requests, and the address for the hearing officer.

**Hearing Officer.** The Director of Health (“Director”) will appoint a hearing officer to preside over hearings. The hearing officer shall be fair and impartial, without any personal interest in the outcome of the appeal.

**Regular Hearings.** The Director’s Hearings are open to the public and are held as scheduled on the third Thursday of each month at 1:00 p.m. in room 300 at 101 Grove Street. Additional hearings may be scheduled on other dates and times to accommodate program needs.

**Special Hearings.** Subject to the provision of appropriate notice, the Director may call a special hearing at any time.

**Hearing Cancellation.** The Director may cancel any regular or special hearing when notified that there is insufficient business to be conducted or for other reasons. In case of cancellation, parties and members of the public will be notified as soon as reasonably possible that the hearing has been cancelled, and a notice of the cancelled hearing will be posted conspicuously on or near the door of the hearing place prior to the scheduled time of the hearing.

**Notice of Hearing.** Notification of the hearing date and time shall be made in the manner required by the applicable Code. Where the Code does not specify a method of providing notice of the hearing, the Department shall serve a copy of the Notice of Hearing in person, by First Class mail, or by electronic mail, at least 10 calendar days prior to the date set for the hearing.

**Date of Hearing.** Appeals and other matters to be considered by the Director shall be scheduled for hearing consistent with the timeline required by the applicable Code. Where the applicable Code does not specify a date by which a hearing must be scheduled, the Department shall schedule the hearing within 60 days of receipt of the request for hearing. Announcement at a Director’s Hearing of the time and place to which a Director’s Hearing is rescheduled or
continued shall be deemed sufficient notice and no other notice shall be required for any such rescheduled or continued hearing.

**Hearing Continuation.** At the Director’s discretion, a scheduled hearing may be continued to the next available date on request.

**Order of Agenda.** The Hearing Secretary will set the order in which cases will be heard.

**Oath.** At the outset of the hearing, the hearing officer will ask all persons who intend to provide testimony to swear or affirm that they will tell the truth, under penalty of perjury.

**Written submittals.** The parties may submit written briefing to the hearing officer in advance of the hearing, provided the written submittals meet the following requirements:

a. **Length:** written submittals may be no more than eight pages, double spaced, and may include an unlimited number of exhibits.

b. **Exhibits:** Exhibits may include photographs, maps, drawings, or any other information that is relevant to the appeal.

c. **Deadline:** Written submittals are optional, but must be delivered to the hearing officer no later than four business days prior to the hearing. For example, if a hearing is scheduled to be held at 1 pm on a Thursday, the written submittal must be delivered by no later than 1 pm on the Friday prior to the hearing. A printed copy of the written submittal must be delivered to
   
   DPH-Environmental Health Hearing Officer, c/o Department of Police Accountability
   Attn: Paul Henderson
   25 Van Ness Ave, Suite 700
   San Francisco, CA 94102
   or delivered electronically to Hearing Officer Paul.Henderson@sfgov.org. Written submittals received after the deadline will be rejected.

d. **Delivery to opposing party.** Copies of written submittals, including exhibits, must be delivered to all parties on the day they are submitted to the hearing officer. Written submittals may be sent or delivered to the
   
   Department of Public Health, Environmental Health Branch
   1390 Market Street, Suite 210
   San Francisco CA 94102
   or delivered electronically to Hearing Secretary Marylou.Remo@sfdph.org. Where the Department of Public Health has an electronic mail address for the responsible party, it will send a copy of its written submittals to that party by electronic mail. Where the Department of Public Health does not have an electronic address for the responsible party, it will make a copy of its written submittal available for pickup by the appellant at 1390 Market Street, Suite 210. Or, on request, the Department of Public Health may send a copy of its written submittal to the mail delivery address listed on the appellant’s request for hearing.
**Order and Time Limits of Presentations.** Except when the Hearing Officer finds good cause to order the presentations otherwise, the order of presentation of an appeal shall be as follows:

a. In all cases, the Environmental Health manager, inspector or other staff shall speak first and shall be allowed seven minutes to present a timeline of events, relevant testimony, evidence and a recommendation.

b. Next, the applicant or responsible party shall be allowed seven minutes for presentation of relevant testimony and evidence.

c. Three minutes for rebuttal shall be provided to each party, in this same order. The Hearing Officer may increase the amount of time given to the parties, as circumstances warrant and in the interest of fairness. The Hearing Secretary will manage the clock and time allowed for each speaker. A tone will designate the end of each allotted speaking period.

**Rules of evidence.** Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is reasonably reliable. Hearsay evidence is admissible and may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction, or if the party against whom it is offered does not object. Irrelevant and unduly repetitious evidence may be excluded.

**Witnesses.** Each party may call and examine witnesses on any matter relevant to the issues of the hearing. The hearing officer may consider the credibility of witnesses.

**Language interpretation services.** If interpretive services are required they must be requested four business days prior to the scheduled hearing. For example, for a hearing at 1 pm on a Thursday, request for interpreter must be made by 1 pm on the previous Friday. Appellants may request translation services by contacting Hearing Secretary Marylou.Remo@sfdph.org.

**Hearing decision.** The Director will render a final decision within 30 days of the hearing unless the applicable code imposes or allows a different timeframe. The decision will be in writing and sent to the responsible party by first class mail or by electronic mail. The decision shall contain findings of fact, and a determination of the issues presented.

**Audio Recording.** The Hearing Secretary will record the audio of the hearing and this recording is the administrative record for each hearing.

**Section V: Reimposition of the annual fee**
If the owner of the Deemed Approved Off-Sale Alcohol Use can show all of the above, the Department of Public Health shall waive the fee indefinitely, provided, however, that if the Deemed Approved Off-Sale Alcohol Use changes ownership or becomes the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter the annual fee shall be immediately reimposed.