



Sewerage and Water Board of New Orleans
625 St. Joseph Street
Cedric S. Grant, Executive Director

Policy Memorandum No: 109

Issued October 15, 2014

ADMINISTRATIVE HEARING POLICY

TO: All Sewerage and Water Board Employees

PURPOSE

The Sewerage and Water Board of New Orleans is charged with the responsibility of providing sewer, water, and drainage services to the city of New Orleans, and must enforce certain health and environmental rules, regulations and laws in conjunction with same. Therefore, the administrative adjudication policy has been developed to outline procedures that may be used not only to levy certain fines, penalties, costs and fees for violations of federal, state and local laws and Board rules and regulations, but also to assist the Board in the performance of its operations where applicable. However, nothing herein shall prevent, hinder or restrict the General Superintendent and/or Executive Director from exercising the authority granted to them by law to take appropriate remedial and preventative action as may be needed, without the need for an administrative hearing.

ADMINISTRATIVE HEARING PROCEDURES

DEFINITIONS

The following words, terms and phrases, when used in this policy, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Decision or ***order*** means an administrative act of the hearing officer under the authority of this article.

Director means the Executive Director of the Sewerage and Water Board of New Orleans.

Permit or ***license violation*** means any permit or license issued by the Sewerage and Water Board of New Orleans on the basis of incorrect, inaccurate, or incomplete information, or based upon any false or fraudulent statement or misrepresentation.

Respondent or **alleged violator** means any person, including any landowner or any tenant, any representative and/or any authorized agent of a landowner who has been given a notice of violation under this article.

Violator means a person who has been found liable for a violation or ordered to correct a violation in an order issued under this article.

APPOINTMENT OF HEARING OFFICER

- (a) Administrative adjudication proceedings under this article shall be conducted before a hearing officer appointed by the Executive Director. In his/her discretion, the Executive Director may appoint as a hearing officer a person who shall have been licensed to practice law in the state for at least two years.
- (b) The Executive Director may appoint hearing officers to hear administrative adjudications on issues arising in the course and scope of the operation of the Sewerage and Water Board of New Orleans, as more fully described herein. A hearing officer shall be sworn before the Special Counsel of the Sewerage and Water Board of New Orleans to uphold the constitution and laws of the state and the charter and ordinances of the city and to abide by the provisions of the state and city codes of ethics before assuming office.

AUTHORITY OF HEARING OFFICER

Hearing officers who have been appointed and sworn in shall have the authority to hear and decide not only violations of the Rules and Regulations of the Sewerage and Water Board of New Orleans, but also to assist the Sewerage and Water Board in the performance of its operations. Adjudication authority of the hearing officer shall include, but not be limited to, the following:

- (1) Environmental violations;
- (2) Plumbing Code violations;
- (3) Customer service matters;
- (4) Billing disputes;
- (5) Sanitation charges;
- (6) Permit and license violations;
- (7) Termination of water and sewer services;
- (8) Municipal Code violations of water, drainage and sewer operations.

POWERS OF HEARING OFFICERS

The hearing officer shall have the power to:

- (1) Administer oaths and affirmations;

- (2) Issue orders compelling the attendance of witnesses, respondents and violators and the production of documents;
- (3) The hearing officer may, for each separate violation, order the payment of fines, penalties and hearing costs and fees.
- (4) The hearing officer, for good cause, may suspend all or a portion of his/her final order and may make any suspension contingent on the fulfillment of some reasonable condition.
- (5) Order violators to correct violations within a stipulated time;
- (6) Take necessary and lawful measures to appropriately resolve disputes, to include adjustments according to law of any charges, obligations or fines concerning the operations of the Board which are within the Adjudication Authority of the hearing officer as set forth in the previous paragraph, to effect corrections of any violations if the violator fails to do so within the time allocated by the hearing officer;
- (7) Order payment of the costs of such correction;
- (8) Suspend or revoke a permit or license issued under the provisions of the city code, or other Sewerage and Water Board Rules and Regulations, whenever the permit or license is determined to have been issued in error, on the basis of incorrect, inaccurate, or incomplete information, or based upon any false or fraudulent statement or misrepresentation, or in violation of any city code, or any Rules and/or Regulation of the Sewerage and Water Board;
- (9) Issue orders terminating services according to law.

ADMINISTRATIVE HEARING PROCEDURE SOUGHT BY CUSTOMERS/USERS:

- (1) The sewerage and/or water service will not be terminated until a hearing is had before the Administrative Hearing Officer where the customer/user is given an opportunity for an impartial evidentiary hearing to present their side of the dispute. For a customer/user to request an administrative review of a billing dispute, Customer Service matter, sanitation charge issue, reasons for termination of services or any other matter under which the Hearing Officer has authority, he/she must:
 - (a) For Administrative review of reasons for termination of services:
 - i. File a Request For Administrative Review within 10 days of the date of the Termination of Services Notice that was sent by the Sewerage and Water Board
 - (b) For Administrative review of a billing dispute, Customer Service matter, or any other matter under which the Hearing Officer has authority:
 - i. File a Request for Administrative Review within 90 days of when customer/user has reasonable notice of the issue or dispute.

- (2) The Request for Administrative Review requested by the customer/user shall:
 - (a) Be in writing;
 - (b) Provide the municipal address of the property at issue;
 - (c) Provide the date when customer/user had reasonable notice of the issue or dispute;
 - (d) Provide sufficient facts of the issue to be reviewed and action sought;
 - (e) Provide the mailing address and telephone number of the customer/user.

ADMINISTRATIVE HEARING PROCEDURE SOUGHT BY SEWERAGE AND WATER BOARD:

- (1) Whenever the Sewerage and Water Board determines that a violation of its policies, procedures, rules or codes exists, or orders issued thereunder, such as plumbing or environmental code violations, or any other matter under which the Hearing Officer has authority, it must issue Notice of Violation to the customer/user.
- (2) The notice shall:
 - (a) Be in writing;
 - (b) Provide the municipal address of the cited property;
 - (c) Provide the date of the inspection/delinquency;
 - (d) Provide notice of the alleged violations at the cited property;
 - (e) Provide the mailing address and telephone number of the Sewerage and Water Board;
 - (f) Provide the time, date, and location of the administrative hearing whereby the alleged violations shall be adjudicated;
 - (g) Provide notice that the failure to appear at the hearing shall be considered an admission of liability for the charged violation(s);
 - (h) Provide the risk of fees, penalties, costs, and liens that may be imposed for continued violation(s); and
 - (i) Provide the risk of remedial measures that may be ordered by a hearing officer to correct or abate the violation(s).

PROCEDURE FOR HEARING

- (1) Prior to holding an administrative hearing pursuant to this Policy, the Customer/User/Alleged Violator shall be notified at least 10 days in advance of the date that such a hearing is scheduled, unless otherwise provided. Notice shall be personally served or sent to the alleged violator by regular and certified or registered U.S. Mail at either the address listed in the assessor's office of the parish, or in the case of a customer/user requested administrative hearing, at the

address listed on his Request for Administrative Review. The date of the postmark shall be deemed to be the date of delivery. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. Proof of notification and attempts at service shall be entered in the record for each case prior to the hearing.

- (2) Any Customer/User/Alleged Violator may present any relevant evidence and testimony at this hearing and may be represented. A Customer/User/Alleged Violator's physical presence shall not be required at the hearing if documentary evidence, duly verified by such person, is submitted to the Administrative Hearing Officer, prior to the date of the hearing. Nothing contained herein shall be construed to limit the authority or the ability of a hearing officer to determine one's liability or guilt based solely upon submitted documentary evidence.
- (3) Any order compelling the attendance of witnesses or the production of documents may be enforced by the municipal court or by any other court of competent jurisdiction.
- (4) A continuance may be granted upon request, with good cause shown.
- (5) Any administrative adjudication hearing held under the provisions of this policy shall be conducted in accordance with the rules of evidence of the Administrative Procedure Act, R.S. 49:950 *et seq.* Testimony of any person shall be taken under oath and shall be recorded.
- (6) Interlocutory orders shall be served in the manner provided by any specifically applicable state law or, if no other law applies, by a duly commissioned peace officer by personal or domiciliary service provided that interlocutory orders may be served by mail on a respondent who has actually been served with a notice of violation or who has made an appearance
- (7) The hearing officer shall issue a final order, judgment, or notice of judgment within 30 days of the hearing, excluding holidays. A copy of the final order, judgment, or notice of judgment may be personally served or shall be sent to the customer/user/violator and his attorney, if any, by regular and certified or registered U.S. Mail within 14 days of issuance. The order, judgment, or notice of judgment shall:
 - (a) Be signed by the hearing officer;
 - (b) State whether or not the alleged violator is guilty or liable of each violation and any specific determinations thereto, if applicable;
 - (c) Provide the reasons for the decision and the evidence relied upon;
 - (d) Provide the amount of fees, costs, and penalties assessed for each violation, if applicable;
 - (e) Provide the defects to be corrected and the extent by which each violation shall be corrected, repaired, and/or abated, if applicable;
 - (f) Provide the reasonable period of time by which each violation shall be corrected, repaired, and/or abated, if applicable;

- (g) Notify the violator(s) of their right to appeal; and
- (h) Notify the violator(s) that the Sewerage and Water Board may act to abate violation(s) if the violator fails to act in accordance with the order, judgment, or notice of judgment, where applicable.

REHEARING

- (1) A decision or order in a case of adjudication shall be subject to rehearing, reopening or reconsideration within 10 days from the date of its entry. The grounds for such action shall be either that:
 - (a) The decision or order is clearly contrary to the law and the evidence;
 - (b) The party has discovered since the hearing evidence important to the issues which he/she could not have with due diligence obtained before or during the hearing;
 - (c) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or
 - (d) There is other good ground for further consideration of the issues and the evidence in the public interest
- (2) The petition of a party for rehearing, reconsideration or review, and the order of the Administrative Hearing Officer granting it, shall set forth the grounds which justify such action. Nothing in this procedure shall prevent rehearing, reopening or reconsideration of a matter by the Sewerage and Water Board in accordance with other statutory provisions applicable, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening or rehearing, the matter may be heard by the Administrative Hearing Officer, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.



APPEAL

Any final order of the hearing officer may be appealed to the Civil District Court for the Parish of Orleans. Such appeal shall be instituted by filing, within 30 days of the hearing officer's order, a petition with the clerk of the Civil District Court along with payment of such reasonable costs as may be required by the clerk of court. On the same day as the petition for appeal is filed, the customer/ user/ violator shall serve a copy on the Executive Director and a copy on the Special Counsel of the Sewerage and Water Board. After the petition for appeal has been filed, the clerk of court shall schedule a hearing and notify all parties of the date,

time and place of such hearing. Service of notice of appeal under this subsection shall not stay the enforcement and/or collection of the order or judgment unless the person, prior to filing notice of appeal in the Civil District Court, furnishes to the Executive Director, Sewerage and Water Board, security sufficient to assure satisfaction of the finding of the hearing officer relative to the fine, fee, penalty, costs of the hearing and costs, if any, of correcting the violation.

PROCEDURES NOT EXCLUSIVE

The regulations, procedures, and remedies established by this policy shall not be deemed exclusive and may be employed in the civil enforcement of a city code or Board rules and/or regulations before, during or after the employment of any other civil or criminal enforcement mechanism.

Legal Approval:		Date: <u>10/20/14</u>
Executive Director Approval		Date: <u>10/20/14</u>

Revision No.	Issue Date	Reason for Revision
	10/15/14	New Issue

POLICY UPDATE: Sewerage and Water Board of New Orleans reserves the right to review and update its policies and procedures, as deemed necessary, at any time.