

Article 11. Informal Conferences and Formal Appeals

§ 2750. Application and Scope.

(a) The provisions of this article apply to the informal and formal procedures available to a cited person, as defined by section 2002 of this chapter, who has received a notice of a violation issued by the enforcement agency pursuant to section 18867 of the Health and Safety Code.

(b) None of the procedures for an informal or formal appeal process extend the time allowed for the correction of violations noted in the original notice of violation or noted in subsequent notices of violation issued to the same person or about the same situation unless:

(1) an extension of time allowed for the correction of violations is contained in the written determination provided by the enforcement agency pursuant to subsection 2754(b), or

(2) an extension of the time allowed for the correction of violations is contained in the final, formal decision issued by an enforcement agency pursuant to subsection 2756(f).

NOTE: Authority cited: Sections 18865 and 18868, Health and Safety Code. Reference: Sections 18866.5, 18867 and 18868, Health and Safety Code.

§ 2752. Request for Informal Conference.

(a) The following informal conference process shall be available to a person who is required to respond to a notice of violation issued pursuant to section 18867 of the Health and Safety Code, and shall be initiated solely at the discretion of the person addressed in the notice of violation if he or she desires to appeal or seek clarification of the notice of violation.

(b) The use of the informal conference process shall be limited to the dispute of one or more of the following issues contained in a notice of violation:

(1) The existence of one or more alleged violations,

(2) The alleged failure to correct the violations in the required time frame, and

(3) The reasonableness of the time frame within which the violations shall be corrected.

(c) If a person is in receipt of a notice of violation and chooses to request an informal conference with a representative of the enforcement agency,

(1) the person shall make a written request to the enforcement agency for an informal conference, and

(2) the person shall ensure that the enforcement agency receives the written request within ten (10) working days of the notice of violation.

(d) The written request for an informal conference shall provide the following information:

(1) The name, address, and telephone number of the person requesting the informal conference, and

(2) A brief description of the issues disputed.

(e) Within three (3) working days of the receipt of a written request for an informal conference, the enforcement agency shall contact the person who submitted the request and shall schedule an informal conference for the earliest possible, mutually convenient time and place. The informal conference shall occur during the normal working hours and shall be held no later than fifteen (15) working days after the enforcement agency's receipt of the written request. "Normal working hours" are from 8:00 a.m. to 5:00 p.m. on Monday through Friday, excluding holidays.

(f) The enforcement agency shall deny a request for an informal conference only if one or more of the following conditions apply:

(1) The issues identified for dispute in the written request do not include at least one of the issues specified in subsection (b), or

(2) The person requesting the informal conference is not available to meet with the representative of the enforcement agency within the fifteen (15) day time period and the enforcement agency determines that good cause does not exist to postpone the informal conference.

NOTE: Authority cited: Sections 18865 and 18868, Health and Safety Code. Reference: Sections 18867 and 18868, Health and Safety Code.

§ 2754. Informal Conference.

(a) An informal conference related to a violation shall occur at the time and place scheduled and shall provide the person requesting the conference with the opportunity to explain to the representative of the enforcement agency each issue disputed and the facts and circumstances of each dispute.

(b) Within five (5) working days of the completion of the informal conference, the enforcement agency shall provide a written notification of its determination to the person who requested the conference.

(c) The written determination shall sustain, overrule, or modify the original notice of violation that contained each issue disputed at the informal conference. Modification may include:

(1) changes to the original violation cited,

(2) where necessary to provide a reasonable time for compliance, an extension of the time within which the modified required corrective action shall be completed. The extension of time shall not exceed thirty (30) calendar days, or such longer period of time allowed by the enforcement agency, from the date of the enforcement agency's written determination or greater period of time as determined by the enforcement agency.

(d) The written request for an informal conference shall be considered withdrawn if the person who submitted the request:

(1) does not appear at the mutually-agreed upon time and place scheduled for the informal conference, and

(2) does not notify the enforcement agency, within five (5) calendar days prior to the date on which the informal conference was scheduled, with written confirmation of the good-cause reason for not appearing at the informal conference.

(e) If the enforcement agency determines that good cause exists for a postponement, the enforcement agency shall postpone an informal conference for a period of time not to exceed fifteen (15) working days and shall notify the person in writing of the time and date of the postponed conference. Otherwise, the agency shall confirm the automatic withdrawal and, if applicable, the denial of the request due to a lack of a good-cause reason, as determined by the enforcement agency.

NOTE: Authority cited: Sections 18865 and 18868, Health and Safety Code. Reference: Sections 18867 and 18868, Health and Safety Code.

§ 2756. Request for Appeal of Decision Rendered in Informal Conference.

(a) Any park owner or operator, or any registered owner of a unit, who has received a notice of violation issued pursuant to section 18867 of the Health and Safety Code, has the right to petition for a formal hearing with the person in charge of the enforcement agency or that person's designee after a decision is rendered in an informal conference or the agency has denied the request for an informal conference.

(b) The person requesting the formal hearing shall submit a written petition to the enforcement agency:

(1) within ten (10) working days of the date of the denial of a request for an informal conference, or

(2) within five (5) working days of the date of the enforcement agency's written determination, following an informal conference, if the issues contained in the notice of violation were disputed at the informal conference.

(c) The written petition shall:

(1) provide the name, address, and phone number of the petitioner,

(2) provide the petitioner's reasons for requesting a formal hearing,

(3) summarize each issue to be disputed at the formal hearing, and

(4) state the remedy the petitioner is seeking.

(d) Upon receipt of the petition, the enforcement agency shall set a time and place for the formal hearing and shall provide the petitioner with written notice of the scheduled hearing.

(1) The formal hearing shall commence within ten (10) working days of the date of the petition.

(2) The petitioner shall have the right to apply for the postponement of the date of the formal hearing for a reasonable amount of time. The petitioner shall provide a good-cause reason for the request.

(3) The enforcement agency shall grant a request for postponement if it determines that the petitioner has good-cause reason for the postponement.

(e) The formal hearing shall provide the petitioner with the opportunity to be heard and to show cause why the notice of violation should be modified or withdrawn.

(1) The petitioner shall be entitled to call witnesses to testify at a formal hearing.

(2) The petitioner shall be entitled to be represented by legal counsel at a formal hearing.

(f) Within ten (10) working days of the formal hearing, the enforcement agency shall provide in writing a final, formal order to the petitioner. The final, formal order shall:

(1) sustain, modify, or withdraw the notice of violation issued pursuant to section 18867 of the Health and Safety Code, and

(2) shall clearly state the enforcement agency's findings upon which the final, formal order is based.

NOTE: Authority cited: Sections 18865 and 18868, Health and Safety Code. Reference: Sections 18867, 18868, and 18871.14 Health and Safety Code.

§ 2758. Petition to Review Order of Local Enforcement Agency following Formal Hearing.

(a) A park owner or operator, or the registered owner of a unit,

(1) who has received a notice of violation issued pursuant to Health and Safety Code section 18867 by an enforcement agency other than the department, and

(2) who has received a final, formal order from the enforcement agency following a formal hearing, shall be entitled to petition the department to review and investigate, as necessary, the enforcement activities of the local enforcement agency.

(b) The petition shall be in writing and shall include the following:

(1) a copy of the original notice of violation,

(2) a copy of the enforcement agency's written determination, if an informal conference was held,

(3) a copy of the enforcement agency's final, formal order, and

(4) a clear, concise explanation of the issues that the petitioner continues to dispute.

(c) The department shall consider the petition in conjunction with the department's responsibility to monitor local enforcement activity pursuant to subdivision (d) of section 18865.7 of the Health and Safety Code.

(1) Within sixty (60) working days of the receipt of the petition, the department shall review the petition and provide the petitioner with written notice of whether the activities of the local agency require investigation by the department.

(2) If the department has determined that the activities of the local agency require investigation by the department, the written notice to the petitioner shall provide a time frame for the investigation.

(3) If the department investigates the enforcement activities of a local agency in response to one or more petitions provided pursuant to subsection (a), the department shall notify each petitioner within sixty (60) days of the results of the department's investigation.

(d) If the department finds that the notice of violation, written determination, and/or final, formal order issued by the local enforcement agency reflect(s) nonenforcement of the law, the department shall initiate corrective action pursuant to the provisions of subdivision (d) of section 18865 of the Health and Safety Code.

(e) A petition filed pursuant to this section shall not extend the time for correction of the violation as provided in the original or any subsequent notice of violation issued by the local enforcement agency unless the department, based on the petition and materials submitted with the petition, determines there is a high likelihood that the local enforcement agency was incorrect in issuing the notice of violation.

NOTE: Authority cited: Sections 18865, Health and Safety Code. Reference: Sections 18865.7, 18867 and 18868, Health and Safety Code.