

GOLDWATER

I N S T I T U T E

Permit Freedom Act

Section 1. {Permit conditions}

Notwithstanding any other law, in any case in which a license or permit is required prior to a person engaging in any constitutionally protected activity, the state, county, or municipal government or agency responsible shall specify in clear and unambiguous language the criteria for approval of the license or permit. No government agency may deny a permit for reasons not specified by law. The government or agency responsible shall approve or deny an application for a license or permit within 30 days or such other time as the state, county, or municipal government or agency shall by law prescribe. In the event that a permit or license application is not approved or denied within that applicable time period, the application shall be deemed approved unless the application is incomplete and the applicant, after being notified of the deficiency, has failed to correct it. The determination of what constitutes clear and unambiguous language shall be a judicial question, without deference to the government or agency. This provision shall not apply to licenses or permits the criteria for which are established by federal law.

Section 2. {Agency hearings}

A. Unless knowingly and voluntarily waived by the regulated party, all agency hearings must comply with the rules of procedure and rules of evidence required in judicial proceedings. Notice may be taken of judicially cognizable facts, and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and parties shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence, and to cross-examine witnesses.

C. A party may file a motion with the director of the agency to disqualify an administrative law judge from conducting a hearing for bias, prejudice, personal interest, or lack of technical expertise necessary for a hearing. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense.

E. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable.

F. Disposition may be made by stipulation, agreed settlement, consent order, or default. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

G. The burden of proof in agency hearings shall be preponderance of evidence. Notwithstanding any other law, at a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the agency has the burden of persuasion. At a hearing on an agency action to suspend, revoke, terminate, or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

Section 3: {Review of agency action.}

In any action to review a final administrative decision, the parties shall be entitled to a speedy and public determination by a court of law. If requested by a party to an action within 30 days after filing a notice of appeal or petition for review, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination.

Notwithstanding any other law, for review of final administrative decisions, the court shall decide de novo all relevant questions of law, including the interpretation of constitutional, statutory, and regulatory provisions, unless the parties stipulate otherwise. On demand of any party, the determination of facts may be made by a jury. Relevant and admissible exhibits and testimony that were not received during the administrative hearing shall be admitted so long as compliant with the rules of evidence, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

1. The exhibit, testimony, or objection was withheld for purposes of delay, harassment, or other improper purpose.
2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party