GOLDWATER
INSTITUTE

Permit Freedom Act

AN ACT relating to ensuring fair permitting and licensing practices.

Section 1. Definitions

(A) "Agency" means any department, board, commission, division, office or other authority of the state government, as well as all units, departments, offices or other authorities of county or municipal government and any employee or other person acting on behalf of an agency in reviewing or acting on an application for a license or permit.

(B) "License or permit" means any form of prior authorization that a party must obtain from an agency prior to engaging in a particular regulated activity.

Section 2. License and Permit Criteria

(A) Notwithstanding any other law, an agency shall specify in clear and unambiguous language the criteria for approval of a license or permit. Before an application is submitted, the agency shall make publicly available all forms, checklists, criteria, standards, and other requirements that the agency will use in acting upon a permit or license application.

(B) No agency may deny a permit or license or impose a condition, correction, requirement, or request for information unless the condition, correction, requirement, or request is specifically authorized by statute, rule, regulation, ordinance, or code in effect on the day the application for the license or permit is submitted. Upon denying an application for a license or permit, an agency shall provide written justification of the denial based upon specific and cited noncompliance with statutory or regulatory requirements. An agency may not deny an application or impose a condition on the basis of a guideline, policy, manual, custom, practice, unpublished standard, or interpretation that does not have the force of law.

(C) The provisions in this Act shall not apply to licenses or permits the criteria for which are established by federal law.

Section 3. License and Permit Timelines

(A) Within ten (10) business days after receipt of an initial license or permit application, an agency shall notify the applicant in writing that the application is complete. If the agency fails to issue such a determination within ten (10) business days, the application shall be deemed complete.

1. If an agency determines that an initial application for a license or permit is incomplete due to a missing component or other deficiency, the agency must notify the applicant within ten (10) business days of receiving the application with a single, comprehensive written report that identifies every deficiency and provides

instructions on how to cure the application. The notice shall cite the specific statute, rule, regulation, ordinance, or code requiring each missing or deficient component.

2. Notification of incompleteness does not constitute a written report of deficiency pursuant to Subsection (B). Upon receiving additional components to cure the application, an agency must determine whether the application is complete within five (5) business days. No subsequent notice of incompleteness may identify a deficiency that was not already identified in the agency's initial notice and that remains or was not adequately remedied after such notice. Once an application is determined or deemed complete, the agency may not subsequently determine that the application is incomplete.

(B) An agency responsible for reviewing a completed application for a license or permit shall:

1. Approve the application within thirty (30) business days from the date an application is deemed complete pursuant to Section 3, Subsection A, unless a different period is prescribed by appliable law; or
2. Provide the applicant with a single, comprehensive, detailed written report of all deficiencies with the application within thirty (30) business days of the date of submission. All deficiencies identified in the written report must be required by law, regulation or ordinance and the relevant legal authorities must be cited. An agency shall consolidate all change requests pertaining to a single application into a single deliverable document or set of documents when responding to the applicant. The written report required by this paragraph constitutes the agency's final and exhaustive identification of deficiencies in the application as submitted. After issuing the written report, the agency may not identify, assert, rely on, or require correction of any substantive deficiency that was not specifically identified in the report.

(C) If an agency fails to issue an approval or an initial written report of deficiencies to the applicant within thirty (30) business days from the date the application is received by the agency, then the application is deemed approved.

(D) If an agency issues a written report of deficiencies and subsequently receives a response from the applicant addressing the deficiencies identified in the written report, then the agency must within fifteen (15) business days after receipt of the applicant's response:

1. Approve the application; or
2. Issue a written remaining-deficiencies reporting identifying only deficiencies that were specifically identified in the initial written report and the agency determines remain unresolved. The remaining-deficiencies report shall specifically explain why the applicant's response failed to resolve each remaining deficiency and shall cite the same legal requirement identified in the initial written report. The agency may not change the legal or factual basis of a previously identified deficiency in a manner that creates a new requirement. If the agency does not approve the application or timely issue a remaining deficiencies report within fifteen (15) business days, the application is deemed approved.

(E) An agency shall not issue more than one initial written report of substantive deficiencies and one remaining-deficiencies report for a single application for a license or permit. Upon determining that deficiencies in the remaining-deficiencies report are not resolved after receiving documentation seeking to remedy the deficiencies, the agency shall within fifteen (15) business days either approve or deny the application and provide written justification of any denial based upon specific and cited noncompliance with statutory or regulatory requirements. A denial under this subsection may be based only on a substantive deficiency specifically identified in the initial written report of deficiencies and identified as remaining unresolved in the remaining-deficiencies report. Upon such denial, the agency shall return fifty (50%) of the total amount of fees the applicant paid to the agency during the review process.

Section 4. 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 proof. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of proof.

Section 5. Review of Agency Action

(A) A person aggrieved by a violation of this Act may bring an action for declaratory or injunctive relief, mandamus or other appropriate relief in a court of competent jurisdiction without first exhausting any administrative remedy. In any action to review a final administrative decision on a license or permit application, 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 thirty (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.

(B) A court shall give no deference to an agency's interpretation of this Act or to an agency's determination that it complied with any requirement or deadline imposed by this Act. 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.

(C) 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.

(D) In an action concerning whether an application was deemed approved, whether an agency timely identified a deficiency, whether a requirement was authorized by law, or whether any exception under this Act applies, the agency bears the burden of proof.

(E) A prevailing applicant in an action to enforce this Act is entitled to reasonable attorney fees and costs.

(F) The rights and remedies provided by this Act are cumulative and do not preclude any other right or remedy provided by law.

(G) An agency may not require an applicant to waive a right or protection provided by this Act as a condition of accepting, processing, reviewing, or approving an application. Any purported waiver is void unless it is knowing, voluntary, in writing, and requested by the applicant for the applicant's benefit.