

1 BEFORE THE BOARD OF SUPERVISORS

2 OF THE COUNTY OF FRESNO

3 STATE OF CALIFORNIA

4 ORDINANCE NUMBER 17-020

5 AN ORDINANCE ADDING CHAPTER 2.81 TO THE ORDINANCE CODE OF THE
6 COUNTY OF FRESNO PERTAINING TO THE OFFICE OF COUNTY HEARING OFFICER.

7 The Board of Supervisors of the County of Fresno ordains as follows:

8 **Section 1.** That the Ordinance Code of the County of Fresno is hereby amended by adding
9 Chapter 2.81 of Title 2 to read as follows:

10 Chapter 2.81 – OFFICE OF COUNTY HEARING OFFICER

11 Section 2.81.010 – Office Created

12 Section 2.81.020 – Duties of Office

13 Section 2.81.030 – Definitions

14 Section 2.81.040 – Appointment of Hearing Officers

15 Section 2.81.050 – Qualifications of Hearing Officer

16 Section 2.81.060 – Term of Office

17 Section 2.81.070 – Disqualification of Hearing Officer

18 Section 2.81.080 – General Authority of County Hearing Officer

19 Section 2.81.090 – Testimony, Rights and Evidence

20 Section 2.81.100 – Record of the Hearing

21 Section 2.81.110 – Cost of Preparation of Record of Hearing

22 Section 2.81.120 – Rules of Procedure

23 Section 2.81.010 – Office Created

24 Pursuant to Government Code section 27720 et seq., and Fresno County Charter

25 Section 16, the Office of the Fresno County Hearing Officer is hereby established, which shall
include five (5) Hearing Officer positions.

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1 Section 2.81.020 – Duties of Office

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3 The duties of the Office of Fresno County Hearing Officer are to conduct those hearings
4 that are delegated to it by the Fresno County Board of Supervisors by ordinance or resolution in
5 accordance with the requirements of Government Code section 27720, et seq.
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7 Section 2.81.030 – Definitions

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- 9 A. “Ordinance Code” means the County of Fresno Ordinance Code and County of Fresno
10 Zoning Ordinance Code.
 - 11 B. “County Department” is the department responsible for the enforcement of the cited
12 violation(s) of the Ordinance Code or other county policy or rule subject to appeal before
13 a Hearing Officer.
 - 14 C. “County Officer” is the county employee charged with the enforcement of the cited
15 violation(s) of the Ordinance Code or other county policy and/or rule subject to appeal
16 before a Hearing Officer.
 - 17 D. “Hearing” is an administrative adjudicative proceeding presided over by a Hearing
18 Officer who receives evidence and legal arguments prior to issuing a decision resolving
19 contested issues of law and/or fact.
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21 Section 2.81.040 – Appointment of Hearing Officers

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- 23 A. The County Administrative Officer shall appoint five (5) attorneys-at-law as County
24 Hearing Officers (hereafter, individually referred to as “Hearing Officer”), who shall each
25 satisfy the requirements of Section 2.81.050, herein.

1 B. A vacancy in any one of the five (5) Hearing Officer positions shall be filled in the same
2 manner in which the position that has become vacant was filled, and the person
3 appointed to such vacancy shall serve the remainder of the unexpired term of the
4 person who left office or was removed from office.

5 C. A Hearing Officer may be an independent contractor, or part-time or full-time employee
6 of the County of Fresno. A Hearing Officer shall provide no services to the County other
7 than those of a Hearing Officer.

8 D. The County Administrative Officer is authorized to execute employment agreements with
9 individuals chosen to serve as Hearing Officers on behalf of the County of Fresno.

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11 Section 2.81.050 – Qualifications of County Hearing Officer

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13 A. A Hearing Officer shall have the qualifications stated in California Government Code
14 section 27724.

15 B. A Hearing Officer shall maintain an active license to practice law in the State of
16 California continuously during his or her term of office.

17 C. Failure by a Hearing Officer to satisfy the requirements of Section 2.81.050.B following
18 his or her appointment shall automatically revoke a Hearing Officer's appointment to
19 serve. A Hearing Officer shall immediately notify the County Administrative Officer of his
20 or her failure to satisfy the requirements of Section 2.81.050.B.

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22 Section 2.81.060 – Term of Office

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24 The term of office of each Hearing Officer shall be four (4) years and shall commence on
25 the day of his or her appointment, provided that each Hearing Officer shall continue to serve

1 until his or her successor has been duly appointed and qualified. A Hearing Officer who is in the
2 process of hearing a matter when the Hearing Officer's term expires, however, shall continue to
3 discharge the duties as a Hearing Officer for the matter until the matter is completed. A Hearing
4 Officer may be appointed to successive terms.

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6 Section 2.81.070 – Disqualification of Hearing Officer

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8 A. A Hearing Officer is subject to disqualification for bias, prejudice, or interest in a
9 proceeding. A Hearing Officer shall voluntarily disqualify himself or herself and withdraw
10 from any case in which there are grounds for disqualification.

11 B. It is not alone or in itself grounds for disqualification, without further evidence of bias,
12 prejudice, or interest, that the presiding officer:

- 13 1. Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the
14 proceeding involves the rights of that group.
- 15 2. Has experience, technical competence, or specialized knowledge of, or has in any
16 capacity expressed a view on, a legal, factual, or policy issue presented in the
17 proceeding.
- 18 3. Has as a lawyer or public official participated in the drafting of laws or regulations or
19 in the effort to pass or defeat laws or regulations, the meaning, effect, or application
20 of which is in issue in the proceeding.

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22 2.81.080 – General Authority of County Hearing Officer

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24 When any provision of the Ordinance Code, any resolution of the Board of Supervisors
25 or any policy of a County Department provides that an appeal from an administrative action by a

1 County officer or department shall be assigned to a Hearing Officer appointed under this
2 Chapter, the Hearing Officer shall have the authority to conduct a hearing, receive evidence,
3 administer oaths, rule on the admissibility of evidence and upon questions of law, and any other
4 powers or duties authorized by law. The Hearing Officer's authority on a particular matter,
5 however, may be limited by the applicable Ordinance Code. Quasi-legislative matters referred
6 to the Hearing Officer for decision retain their quasi-legislative nature and nothing in the appeal
7 or decision of such matter shall be subject to County Ordinances, rules or State law governing
8 quasi-judicial hearings or appeals. The Hearing Officer shall render a written decision, including
9 any findings or conclusions of law required for the decision and submit the decision to the Clerk
10 to the Board Supervisors who shall promptly mail a copy to all parties along with a proof of
11 service.

12 13 2.81.090 – Testimony, Rights and Evidence 14

15 Oral evidence shall be taken by the Hearing Officer only upon oath or affirmation during
16 the hearing. Each party shall have the following rights during a hearing:

- 17 1. to call and examine witnesses;
- 18 2. to introduce exhibits;
- 19 3. to cross-examine opposing witnesses on any matter relevant to the issues whether
20 or not the matter was elicited or discussed during direct examination;
- 21 4. to impeach witnesses regardless of which party first called them to testify; and,
- 22 5. to rebut unfavorable or negative evidence.

23 The Hearing Officer is authorized to control the scope of evidence and the parties' means to
24 obtain evidence in a particular hearing. The Hearing Officer may direct any party to produce
25 documentary or other evidence in that party's control if reasonably necessary to the

1 determination of the matter pending before the Hearing Officer and may consider any refusal or
2 failure to produce such evidence in rendering a decision. If the party against whom the agency
3 is proceeding does not testify on his or her own behalf, that party may be called and examined
4 or cross-examined.

5 The hearing need not be conducted according to technical rules relating to evidence or
6 witnesses, except as provided in this Chapter. Any relevant evidence shall be admitted if it is
7 the sort of evidence on which responsible persons are accustomed to rely in the conduct of
8 serious affairs, regardless of the existence of any common law or statutory rule that might make
9 improper the admission of the evidence over objection in civil actions. Hearsay evidence may
10 be used for the purpose of supplementing or explaining other evidence, but shall not be
11 sufficient in itself to support a finding unless it would be admissible over objections in civil
12 actions. The rules of privilege shall be effective to the same extent that they are now or
13 hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall
14 be excluded.

16 2.81.100 – Record of the Hearing

18 A Hearing Officer shall cause an audio recording of the hearing to be made. Any party
19 at his or her own expense may provide for the taking of testimony by a qualified stenographic
20 reporter.

22 2.81.110 – Cost of Preparation of Record of Hearing

24 Except when otherwise prescribed by statute, the actual costs of preparing the record of
25 proceedings shall be borne by the person requesting the record. No written request for a record

1 of proceedings shall be deemed filed with the County unless and until such person has
2 deposited with the County the estimated costs of preparation thereof as determined by the
3 officer responsible for such preparation, with the difference, if any, from actual costs to be
4 refunded at the time of delivery of the record.

5 Upon payment of the requisite fees to the responsible enforcement agency, that agency
6 shall prepare a duplicate audio recording of the proceedings, a copy of any documentary
7 evidence admitted at the hearing and any pleadings, notice, order, recommended order, final
8 order or other paper relating to the case. The cost of preparing the record may be waived for
9 individuals who meet the qualifications of a fee waiver in the Superior Court of this State.

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11 **2.81.120 – Rules of Procedure**

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13 The Board of Supervisors by ordinance or resolution may adopt rules of procedure
14 governing the conduct of hearings.

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16 **Section 2:** This ordinance shall take effect thirty (30) days after final passage.

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THE FOREGOING, was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this 31st day of October, 2017, to wit:

- AYES: Supervisor Borgeas, Magsig, Mendes, Pacheco, Quintero
- NOES: None
- ABSENT: None
- ABSTAINED: None



BRIAN PACHECO, CHAIRMAN of the Board of Supervisors of the County of Fresno

ATTEST:
BERNICE E. SEIDEL
Clerk to the Board of Supervisors
County of Fresno, State of California

By Susan Bishop
Deputy