



Board Agenda Item 31

DATE: October 31, 2017

TO: Board of Supervisors

SUBMITTED BY: Jean Rousseau, County Administrative Officer

SUBJECT: Creation of the Office of County Hearing Officer

RECOMMENDED ACTION(S):

Conduct second hearing and adopt Ordinance amending Ordinance Code of the County of Fresno, Title 2 - Administration, by adding Chapter 2.81, relating to the creation of the Office of the Fresno County Hearing Officer; and waive reading of the ordinance in its entirety.

Approval of the proposed Ordinance would create the Office of Fresno County Hearing Officer ("Office"), create five County Hearing Officer positions and specify the general powers and limitations for hearing officers. Following the second hearing, staff would return with ordinance amendments and resolutions to authorize the Board to delegate appeals from administrative actions to the Office for final resolution and refer quasi-legislative matters to the Office for recommendations to the Board.

ALTERNATIVE ACTION(S):

If the recommended action is not approved, the Office will not be created, and matters that might otherwise be delegated to the Office shall continue to be heard by the Board of Supervisors or pursued in the civil courts.

FISCAL IMPACT:

The Net County Cost associated with the recommended action for FY 2017-18 is not expected to exceed \$100,000. The Hearing Officers, experienced attorneys-at-law, would be employed as independent contractors, or part-time or full-time employees of the County. Funding for implementation of the Office of the Fresno County Hearing Officer is available in the Interest and Miscellaneous Expenditures Org 2540 to cover the Net County Cost. Savings are anticipated from the decrease in civil litigation costs; however, at this time the savings are not measurable. Therefore, no savings are included as an offset to the estimated Net County Cost.

DISCUSSION:

The jurisdiction of the County of Fresno is broad, encompassing frontline law enforcement, public health services, social services, public works and planning services, and the library system. The Board of Supervisors oversees the provision of these services through its public meetings and the work of the individual offices of each Supervisor.

Due to the breadth of responsibility of Board of Supervisors, its meeting agendas typically involve the consideration of more than 40, and sometimes more than 80, separate items of business. Items of business before the Board may include approval of contracts, adoption of ordinances, consideration of

appeals from the Planning Commission on land use permits, declaration of local emergencies, and consideration and action on administration of the County.

The Board is also called upon to resolve quasi-judicial matters. Examples of such quasi-judicial matters include, but are not limited to, appeals of administrative citations issued for the illegal cultivation of marijuana under Chapter 10.64 of the Ordinance Code, and the consideration of requests for determination of public convenience or necessity for application for certain licenses issued by the State Department of Alcoholic Beverage Control.

Quasi-judicial matters are unique items of business because they require the receipt and consideration of evidence upon which conclusions of law are reached. While the Board provides an opportunity for public comment on each item of business on its agenda, Board Meetings are not always conducive to the development of the type of evidentiary record often offered in quasi-judicial matters. For example, where one party to a matter wishes to clarify or challenge a statement made by a witness by asking that witness a question (e.g., cross-examination), it can be difficult to accommodate such questioning. Finally, because the Board is subject to the open meeting requirements of the Brown Act, the Board cannot deliberate in private, even though doing so imposes its own limitations. In the context of Board agendas with many other items of business, many of them with their own complexities, conducting quasi-judicial hearings can be very challenging.

In addition, certain administrative actions are enforced through civil lawsuits filed in the superior court. Code enforcement actions are examples of such administrative actions pursued in the civil courts. Enforcement through court action is slow with a typical civil lawsuit taking a year and half to resolve. These lengthy court proceedings result in delayed enforcement action.

California law provides your Board with an alternative mechanism to resolve quasi-judicial matters. California Government Code, section 27720, et seq., authorizes your Board to establish the Office of County Hearing Officer (hereafter, the "Office") to resolve matters for which a hearing must be held or findings of fact or conclusions of law be made. To be eligible for appointment, hearing officers must be attorneys-at-law having been admitted to practice before the courts of this State for at least five years prior to appointment. The Board may choose the types of hearings to delegate to the Office, and may effectuate such delegations by ordinance or resolution.

Staff believes the County will realize the following benefits from creating the Office and delegating matters to it for resolution:

1. **Operational Efficiencies:** Matters previously scheduled for hearing before the Board will be heard by a County Hearing Officer, creating additional time during Board Meetings for consideration of other matters. Furthermore, administrative actions heard by a Hearing Officer will result in quicker resolution and faster enforcement action compared to court action. Because Hearing Officers will specialize in the types of matters, which come before them, they should be able to develop efficiencies, which lead to more speedy resolutions.
2. **Stronger Administrative Records:** Hearing Officers will have the ability to receive and preserve evidence in the different forms it may be offered by the parties, which will provide a stronger evidentiary basis for the decisions they reach than the Board can achieve for the same cost.
3. **Convenience of Parties:** In addition, the parties to matters heard by a Hearing Officer will be provided greater flexibility in terms of scheduling, which will reduce costs and speed resolution of such matters.
4. **Deliberative Flexibility:** Hearing Officers will not be limited to deliberating during public sessions. This will provide Hearing Officers with the opportunity to study the evidentiary record and applicable

law or policy in greater detail, which should provide the Hearing Officer the opportunity to reach sound decisions without the pressure of having to address other items of business during a public meeting.

To achieve these goals, the proposed Ordinance includes the following provisions:

- A. Five Hearing Officers:** The County Administrative Officer shall appoint five Hearing Officers, and shall fill any vacancy in one or more positions that may occur in the future.
- B. Retention of Hearing Officers:** Hearing Officers may be employed as independent contractors, or part-time or full-time employees of the County.
- C. Independence of Hearing Officers:** Hearing Officers will serve four-year terms, which may thereafter be renewed, but will not provide other services to the County. These provisions will tend to insulate Hearing Officers from claims of bias in favor of the County.
- D. Mechanism for Disqualification:** A Hearing Officer is subject to disqualification for bias, prejudice, or interest in a proceeding.
- E. Authority of Hearing Officers:** Hearing Officers are authorized to conduct hearings, receive evidence, administer oaths, rule on the admissibility of evidence and upon questions of law, and any other powers or duties authorized by law; provided that a Hearing Officer's authority on a particular matter, however, may be limited by the applicable Ordinance Code.
- F. Rights of Parties:** Parties have the following rights during a hearing:
 - a. to call and examine witnesses;
 - b. to introduce exhibits;
 - c. to cross-examine opposing witnesses on any matter relevant to the issues whether or not the matter was elicited or discussed during direct examination;
 - d. to impeach witnesses regardless of which party first called them to testify; and,
 - e. to rebut unfavorable or negative evidence.
- G. Rules of Procedure:** The Board of Supervisors by ordinance or resolution may adopt rules of procedure governing the conduct of hearings.

With your Board's approval, the Ordinance would take effect 30 days after. Staff will return in 2018 with ordinance amendments and resolutions to refer quasi-judicial and quasi-legislative matters to the hearing officer.

REFERENCE MATERIAL:

BAI #10, October 17, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

Ordinance
Ordinance Summary

CAO ANALYST:

Sonia De La Rosa