

BEFORE THE BOARD OF SUPERVISORS
OF THE
COUNTY OF FRESNO, STATE OF CALIFORNIA

IN THE MATTER OF ADOPTING)
PROCEDURAL RULES FOR THE OFFICE)
OF THE COUNTY HEARING OFFICER)

Whereas, on October 31, 2017, the Board of Supervisors ("Board") of the County of Fresno ("County"), adopted Ordinance Number 17-020 to add Chapter 2.81, entitled "Office of County Hearing Officer" ("Chapter 2.81"), to the Ordinance Code of Fresno County ("Ordinance Code"); and

Whereas, Chapter 2.81 established the office of the county hearing officer, pursuant to Title 3, Division 2, Part 3, Chapter 14 (beginning with section 27720) of the California Government Code; and

Whereas, Ordinance Code section 2.81.120 provides that the Board by ordinance or resolution adopt rules of procedure governing the conduct of hearings; and

Whereas, the Board desires to adopt such rules of procedure for the following purposes: (1) to govern hearings conducted by the Office of the County Hearing Officer; (2) to guide hearing officers and hearing officer staff in the performance of their duties; (3) to ensure due process for appellants; (4) to provide uniformity in the conduct of hearings; and (5) to promote efficiency in the Office of the County Hearing Officer;

Now, therefore, the Board of Supervisors of the County of Fresno resolves as follows:

1. The Board hereby adopts the "Procedural Rules for the Office of the County Hearing Officer" that are attached as exhibit A to this resolution.

2. This resolution is effective immediately upon as adoption by the Board.

1 THE FOREGOING RESOLUTION was passed and adopted by the following vote of the
2 Board of Supervisors of the County of Fresno this 5th day of November, 2019,
3 to wit:

4
5 AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero

6 NOES: None

7 ABSENT: None

8 ABSTAINED: None

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10 

11 Nathan Magsig, Chairman of the Board of
12 Supervisors of the County of Fresno

13 **ATTEST:**

14 Bernice E. Seidel
15 Clerk of the Board of Supervisors
County of Fresno, State of California

16 By: Susan Bishop
17 Deputy

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19 File # 19-1225

20 Agenda # 26

21 Resolution # 19-405
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County of Fresno



Procedural Rules for the Office of the County Hearing Officer

Adopted on November 5, 2019, by the Fresno County Board of Supervisors

Office of the County Hearing Officer
2281 Tulare Street, Suite 304
Fresno, California 93721
(559) 600-1710

Rule 1. Title and Citation of Rules

(a) The official title of these rules is “Procedural Rules for the Office of the County Hearing Officer.” The short title of these rules is “Hearing Officer Rules.”

(b) Recommended forms of citation for these rules are as follows:

Long Title in Body of Text:

“Procedural Rules for the Office of the County Hearing Officer, Rule 1(b)”

Short Title in Body of Text:

“Hearing Officer Rule 1(b)” or “Rule 1(b)”

Within Parentheses or Footnote:

“Hrg. Off. Rule 1(b)”

Rule 2. Authority and Purposes

(a) The Board adopts these rules for the following purposes:

- (1) To govern hearings conducted by the Office of the County Hearing Officer;
- (2) To guide hearing officers and hearing officer staff in the performance of their duties;
- (3) To ensure due process for appellants;
- (4) To provide uniformity in the conduct of hearings; and
- (5) To promote efficiency in the Office of the County Hearing Officer.

(b) These rules shall be interpreted to advance the purposes for which the Board adopted them.

(c) References and comments provided with these rules are intended as aids to interpretation, but are not binding.

Reference—Subdivision (a)(1): Ord. Code, § 2.81.120. Subdivision (a)(3): Morongo Band of Mission Indians v. State Water Resources Control Board (2009) 45 Cal.4th 731, 737.

Rule 3. Definitions

(a) “Appeal” means an appeal from an administrative action by a County officer or department for which there is enabling authority, so that a hearing officer may conduct a hearing on the appeal.

(b) “Appellant” means a person who appeals an administrative action by a County officer or department.

(c) “Board” means the Board of Supervisors for the County of Fresno.

(d) “CAO” means the County Administrative Officer for the County of Fresno.

(e) “Chapter 2.81” means Chapter 2.81 of the Ordinance Code.

- (f) “Day” means calendar day.
- (g) “Enabling authority” means an Ordinance Code provision, a Board resolution, or a policy of a County department as approved by the CAO providing that an appeal from an administrative action by a County officer or department shall be assigned to a hearing officer as provided in Ordinance Code section 2.81.080.
- (h) “Hearing officer” means the same as that term in Chapter 2.81.
- (i) “Hearing officer staff” means staff to the Office of the County Hearing Officer as provided in Ordinance Code section 2.81.130.
- (j) “Office of the County Hearing Officer” means the office established by Ordinance Code section 2.81.010.
- (k) “Ordinance Code” means the Ordinance Code of Fresno County, including the Zoning Ordinance of the County of Fresno.
- (l) “Party” means a party to an appeal.

Reference—Subdivision (h): Ord. Code, § 2.81.040. Subdivision (k): Ord. Code, § 1.04.010.

Rule 4. Administrative Responsibilities

- (a) Hearing officer staff shall receive notices and communications on behalf of hearing officers from the parties in appeals, and shall promptly forward such notices or communications to the relevant hearing officer.
- (b) If necessary or desired by the hearing officer, hearing officer staff shall give notices and communications on behalf of the hearing officer to the parties in an appeal.
- (c) Hearing officer staff shall reserve a hearing room for each hearing and to ensure that it is accessible and adequately equipped at the time of the hearing.
- (d) The CAO shall provide equipment for recording, hearing assistance, and audio-visual presentation during each hearing.
- (e) Hearing officer staff shall review these rules each year, and solicit comments from the hearing officers, to determine whether to recommend any changes. All changes to these rules must be reviewed and approved by County Counsel as to form before they are presented to the Board.
- (f) The CAO shall maintain copies of all ordinances and resolutions of the Board relating to the Office of the County Hearing Officer so that they are conveniently available to hearing officers and the public.

Reference—Ord. Code, § 2.81.130.

Rule 5. Appointment of Hearing Officers

- (a) Candidates to serve as hearing officers must apply by participating in a competitive selection process conducted by the CAO.

- (b)** Each hearing officer appointed by the CAO must:
- (1)** Be an attorney at law admitted to practice before the courts of this state for at least five years prior to appointment;
 - (2)** Maintain an active license to practice law in the State of California continuously during the hearing officer's term in office; and
 - (3)** Satisfy all requirements of Government Code section 27724 and Ordinance Code section 2.81.050.
- (c)** The appointment of a hearing officer is not effective until the hearing officer and the CAO have signed a "Hearing Officer Services Agreement" in the form most recently approved by the Board.
- (d)** The term of office of each hearing officer is four years beginning on the day of appointment provided in the applicable Hearing Officer Services Agreement.
- (e)** A hearing officer who is in the process of hearing an appeal when the hearing officer's term expires shall continue to discharge the duties of a hearing officer for the appeal until the appeal is completed.

Reference—Ord. Code, § 2.81.040. Subdivision (b): Gov. Code, § 27724; Ord. Code, § 2.81.050. Subdivisions (d)–(e): Ord Code, § 2.81.060.

Rule 6. Initiation of Appeals

- (a)** If the enabling authority requires a notice of appeal in order to initiate the appeal, an appellant must file a notice of appeal with the CAO. The appellant must file the notice of appeal within the time specified in the applicable enabling authority, or by the County officer or department that took the administrative action being appealed if the time is not specified in the applicable enabling authority. Otherwise, the appellant must file the notice of appeal within 15 days of the administrative action being appealed.
- (b)** The date when a notice of appeal is filed is determined by either: (1) the date when the notice of appeal is delivered to the CAO, if delivered in person; or (2) the postmark on the envelope addressed to the CAO, if delivered by mail.
- (c)** To be valid, a notice of appeal must:
- (1)** Be in writing and signed by the appellant;
 - (2)** Be timely filed;
 - (3)** Identify the specific administrative action being appealed;
 - (4)** Specify the reason for the appeal;
 - (5)** Contain the name, address, and telephone number of the appellant; and
 - (6)** Have enabling authority, which may but need not be identified in the notice of appeal.

- (d) A notice of appeal does not need to contain a detailed argument or recitation of facts.
- (e) If hearing officer staff receives a document that does not satisfy the requirements for a valid notice of appeal, hearing officer staff shall immediately return the document to the person who submitted it, with a letter stating that the document is not a valid notice of appeal and why. The return of a document under this rule does not extend the time to file a valid notice of appeal.
- (f) If the enabling authority requires a referral from a County department head in order to initiate the appeal, the referral must comply with the requirements of its enabling authority. If hearing officer staff receives a referral that does not comply with the applicable enabling authority, hearing officer staff shall immediately return the referral to the County department head who submitted it, with a letter stating that the referral does not comply with the applicable enabling authority and why.
- (g) Hearing officer staff shall maintain a register of appeals initiated. Hearing officer staff shall assign a number to each appeal that includes (1) the calendar year in which the appeal was initiated, (2) a sequential number (starting over at 1 each calendar year), and (3) an identification of the originating County department using no more than three letters.

Comment—Subdivision (g): For example, if the 38th appeal filed in 2019 originated in the Department of Public Works and Planning, it might be numbered “2019-038-PWP.” County departments may be identified as follows: Agriculture, “AG”; Assessor-Recorder, “AR”; Auditor-Controller/Treasurer-Tax Collector, “AU”; Behavioral Health, “BH”; Child Support Services, “CSS”; Clerk/Registrar of Voters, “CRV”; District Attorney, “DA”; Human Resources, “HR”; Internal Services, “IS”; Library, “LIB”; Probation, “PRO”; Public Defender, “PD”; Public Health, “PH”; Public Works and Planning, “PWP”; Sheriff, “SO”; Social Services, “SS.”

Rule 7. Assignment of Appeals to Hearing Officers

- (a) **Maintenance of Wheel.** There are five hearing officer positions. Hearing officer staff shall maintain a hearing officer list, or “wheel,” that is numbered 1 through 5. Hearing officer staff shall assign each new hearing officer to the lowest open number on the list. If a hearing officer leaves office, the numbers of remaining hearing officers do not change.
- (b) **Assignment by Wheel.** Hearing officer staff shall assign appeals to hearing officers according to the following process. Hearing officer staff shall assign the first appeal to hearing officer number 1, and then assign each subsequent appeal to the hearing officer with the next number in sequence. After hearing officer staff assign an appeal to hearing officer number 5, they shall assign the next appeal to hearing officer number 1, and repeat the process described above. If a hearing officer withdraws or is disqualified for any reason from hearing an appeal, hearing officer staff shall assign that appeal to the hearing officer with the next number in sequence. If there is a hearing officer vacancy, then hearing officer staff shall skip the vacant hearing officer number in carrying out the process described above.
- (c) **Assignment of Panel.** If the enabling authority provides for an appeal from the decision of a hearing officer to a panel of hearing officers, hearing officer staff shall

assign hearing officers to the panel by continuing the process described above, but passing over the hearing officer that heard the original appeal. Hearing officer staff shall designate one hearing officer on the panel to serve as chief hearing officer.

Comments—

Subdivision (a): For example, if hearing officer number 3 were to leave office, then the numbers of hearing officers 1, 2, 4, and 5 would not change, and a new hearing officer would be assigned number 3.

Subdivision (b): For example, if hearing officer number 3 were vacant, then after assigning an appeal to hearing officer number 2, the next appeal would be assigned to hearing officer number 4.

Subdivision (c): For example, if hearing officer number 3 heard the original appeal, and the next appeal would be assigned to hearing officer number 2, and there are no vacancies, then the panel would be hearing officer numbers 2, 4, and 5.

Rule 8. Notice of Hearing

(a) Upon receiving a valid notice of appeal, hearing officer staff shall assign the appeal to a hearing officer as provided in Rule 7, set the appeal for hearing, and provide at least 10 days' written notice to the parties of the date, time, and location of the hearing, and the name of the hearing officer.

(b) Hearing officer staff shall give any other notices required by the applicable enabling authority.

Comment—Subdivision (b): For example, if the administrative action being appealed were a Notice and Order of Abatement under Ordinance Code chapter 1.16, hearing officer staff would need to serve the Notice to Abate Nuisance that is required by Ordinance Code section 1.16.100.

Rule 9. Hearing Packet

(a) Upon receipt of a hearing packet under these rules or the applicable enabling authority, hearing officer staff shall provide the hearing packet to the hearing officer to which the appeal is assigned, and a copy of the hearing packet to the appellant.

(b) If the applicable enabling authority does not require the preparation of a hearing packet, then immediately upon receiving a valid appeal or referral under Rule 6, hearing officer staff shall request from the originating County department a hearing packet documenting the administrative action being appealed. Upon that request, the originating County department shall immediately prepare and deliver a hearing packet to hearing officer staff. The hearing packet must include a written record of the administrative action itself, all notices given to the appellant in connection with that action, and any other documents supporting the administrative action.

Rule 10. Authority of Hearing Officer

(a) When an appeal is assigned to a hearing officer, the hearing officer has the authority to conduct a hearing, receive evidence, administer oaths, rule on the admissibility of

evidence and on questions of law, and has any other powers or duties authorized by law and the applicable enabling authority.

- (b) The authority of a hearing officer may be limited by the enabling authority for the appeal.
- (c) A hearing officer has no authority to issue subpoenas or to compel the attendance of witnesses.
- (d) If a quasi-legislative matter is referred to the Office of the County Hearing Officer and assigned to a hearing officer, the matter retains its quasi-legislative nature and nothing in the appeal or decision of that matter is subject to County ordinances, rules, or state law governing quasi-judicial hearings or appeals.
- (e) In all matters, a hearing officer shall comply with these Rules of Procedure for the Office of the County Hearing Officer.

Reference—Ord. Code, § 2.81.080.

Rule 11. Disqualification and Withdrawal of Hearing Officer

- (a) **Grounds for Disqualification.** A hearing officer is subject to disqualification for bias, prejudice, or interest in a proceeding. It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the hearing officer:
 - (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the appeal involves the rights of that group;
 - (2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the appeal; or
 - (3) Has, as a lawyer or public official, participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the appeal.
- (b) **Voluntary Withdrawal.** The hearing officer shall review the hearing packet immediately upon receiving it to determine whether there is cause for disqualification of the hearing officer. If there is cause for disqualification, the hearing officer shall withdraw from hearing the appeal, notify hearing officer staff immediately, and return the hearing packet to hearing officer staff.
- (c) **Motion for Disqualification.** Before opening statements under Rule 15(f), any party may make a motion that the hearing officer be disqualified for cause. The motion must satisfy the requirements of Rule 13 and must state specific facts establishing bias, prejudice, or interest in the proceeding. The hearing officer shall rule on the motion before proceeding further with the appeal. If the hearing officer grants the motion, the hearing officer shall withdraw from hearing the appeal, notify hearing officer staff immediately, and return the hearing packet to hearing officer staff.

- (d) *Reassignment of Appeal.*** Upon receipt of a notice of withdrawal by the hearing officer, hearing officer staff shall immediately reassign the appeal as provided in Rule 7 and issue a new notice under Rule 8.

Reference—Ord. Code, § 2.81.070.

Rule 12. No Ex Parte Communication

- (a)** Ex parte communication between a hearing officer for an appeal and any party to that appeal is prohibited. A hearing officer shall timely disclose to both parties any ex parte communication that occurs.
- (b)** All appeal-related oral communications between a hearing officer for an appeal and any party to that appeal must be made in the presence of all parties. All appeal-related written communications between the hearing officer and any party to an appeal must be served on all parties.
- (c)** Ex parte communication does not include communication on procedural matters between hearing officer staff and any hearing officer, or between hearing officer staff and any party to an appeal.

Reference—Mathew Zaheri Corporation v. New Motor Vehicle Board (1997) 55 Cal.App.4th 1305, 1319.

Rule 13. Motions

- (a)** Any party may make a motion orally on the record at the hearing, or in writing. The motion must state the grounds for the order and the relief sought. A written motion may not exceed two pages in length. A typed motion must use a font size that is no less than 11 points.
- (b)** A motion may be supported by a memorandum of points and authorities. The memorandum may not exceed five pages in length, excluding exhibits, unless the hearing officer authorizes a longer memorandum. A typed memorandum must use a font size that is no less than 11 points.
- (c)** All written motions and all memoranda must be provided to the hearing officer and to all parties.

Rule 14. Briefs

- (a)** Written briefs are not required, but any party may submit a written brief to the hearing officer before the hearing to address the issues, summarize the evidence that the party intends to produce, and provide legal authority that the party intends to rely on.
- (b)** The hearing officer may ask the parties to submit written briefs on any matter pertinent to the appeal.
- (c)** Written briefs may not exceed 10 pages in length, excluding exhibits, unless the hearing officer authorizes longer briefs. Typed briefs must use a font size that is no less than 11 points.

- (d) All written briefs must be provided to the hearing officer and to all parties.

Rule 15. Hearing Procedures

- (a) **Impartial Hearing.** The hearing officer shall preside over and timely conduct each hearing in a fair and impartial manner. The hearing officer shall not take direction from the CAO, the Board, any member of the Board, any County department head, or any other person in rendering a decision.
- (b) **Continuance.** Each party may make one request for a continuance before the hearing begins, which the hearing officer may grant for good cause shown. The hearing officer shall not approve any further requests for a continuance unless it is agreed on in writing by all parties.
- (c) **Representation.** Each party may be represented by legal counsel of its own choosing and expense before, during, and after the hearing.
- (d) **Personal Appearance.** The appellant must appear personally at the hearing. The spouse, parent, or adult child of the appellant may accompany and represent the appellant during the hearing.
- (e) **Failure to Appear.** If the appellant fails to appear at the hearing, the hearing officer may dismiss the appeal, and the appellant waives any right to object to the dismissal.
- (f) **Audio Recording.** The hearing officer shall cause an audio recording of the hearing to be made, using equipment provided by hearing officer staff. Hearing officer staff may set up and operate the equipment, but the hearing officer is responsible to ensure that the recording is made.
- (g) **Certified Shorthand Reporter.** A party that wishes to have a written transcript of the hearing made by a certified shorthand reporter must submit to the Office of the County Hearing Officer at least five days before the hearing a written request for certified shorthand reporter. The request must be accompanied by a deposit in the amount established by the Office of the County Hearing Officer. Upon receiving the request and deposit, the Office of the County Hearing Officer shall arrange a certified shorthand reporter for the hearing. Upon receiving the invoice for the actual cost of the certified shorthand reporter's services, the Office of the County Hearing Officer shall bill the party that requested the certified shorthand reporter for the amount of the actual cost not covered by the deposit, or shall refund the amount by which the deposit exceeded the actual cost.
- (h) **Order of Proceeding.** The hearing officer shall follow this order of proceeding for each hearing:
- (1) Announce the beginning of the proceedings and the start of the recording;
 - (2) Identify the hearing by party name and appeal number;
 - (3) Request all parties and their representatives to state their names;
 - (4) Explain how the hearing will proceed;

- (5) Hear any preliminary motions or objections, including motions for disqualification of the hearing officer;
 - (6) Allow parties to make opening statements;
 - (7) Allow the County to present evidence and witnesses;
 - (8) Allow the appellant to present evidence and witnesses, including rebuttal evidence and witnesses;
 - (9) Allow the County to present rebuttal evidence and witnesses;
 - (10) Allow the parties to make closing statements;
 - (11) Explain the procedure for issuing the final written decision;
 - (12) Announce the close of the hearing and the end of the recording.
- (i) **List of Participants.** The hearing officer shall make a list of all participants at the hearing.
- (j) **Closing of Record.** At the conclusion of the hearing, the record for the appeal is closed unless the hearing officer has requested closing argument briefs, and the hearing officer cannot accept any further evidence. If the hearing officer has requested closing argument briefs, the record for the appeal is closed upon the passing of the deadline for submission of those briefs. The hearing officer shall promptly inform hearing officer staff of the date of the closing of the record.

Reference—Ord. Code, §§ 2.81.090, 2.81.100.

Rule 16. Evidence

- (a) **Burden of Proof.** The burden of proof is on the County. Unless otherwise provided by law, the proof required is a preponderance of the evidence.
- (b) **Oath or Affirmation.** The hearing officer may only take oral evidence that is given under oath or affirmation.
- (c) **Witnesses.** Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues whether or not the matter was elicited or discussed during direct examination, impeach witnesses regardless of which party first called them to testify, and rebut unfavorable or negative evidence.
- (d) **Scope and Production of Evidence.** The hearing officer may control the scope of evidence and the parties' means to obtain evidence in the hearing. The hearing officer may direct any party to produce documentary or other evidence in the party's control if reasonably necessary to the determination of the pending appeal, and may consider any refusal or failure to produce that evidence in rendering a decision.
- (e) **Testimony by Appellant.** If the appellant does not testify on his or her own behalf, the appellant may be called and examined or cross-examined by the County. If the

County has called the appellant to testify and the appellant refuses, the hearing officer may consider that refusal in rendering a decision.

- (f) **Rules of Evidence.** The hearing officer is not required to conduct the hearing according to the technical rules of law relating to evidence and witnesses. The hearing officer may admit any relevant evidence if it is the kind of evidence that responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of any common law rule or statute which might make improper the admission of that evidence over objection in court. The hearing officer may exclude irrelevant and unduly repetitious evidence.
- (g) **Hearsay.** Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding unless it would be admissible over objections in civil actions.
- (h) **Official Notice.** At the request of any party, the hearing officer may take official notice of any fact that may be judicially noticed by the courts of California. The hearing officer shall inform the parties of the matters to be officially noticed, and shall note those matters in the record. Each party must have a reasonable opportunity to refute any request for the hearing officer to take official notice.
- (i) **Privileges.** The rules of privilege apply to the same extent that they are recognized in civil actions.
- (j) **No Investigation by Hearing Officer.** The hearing officer shall not perform any independent factual research or conduct any investigation, such as inspecting premises, in any pending appeal. Hearing officer staff shall not perform any research or investigation for the hearing officer in any pending appeal.

Reference—Gov. Code, § 27721; Ord. Code, § 2.81.090.

Rule 17. Orders and Decision

- (a) **Orders.** The hearing officer shall prepare all written orders necessary during the pendency of the appeal and provide them to all parties, with a copy to hearing officer staff.
- (b) **Written Decision.** Within the time specified in the enabling authority, or within 30 days from the closing of the record if the enabling authority does not specify a time, the hearing officer shall render a written decision.
- (c) **Contents of Written Decision.** The written decision must include findings of fact and conclusions of law.

Reference—Ord. Code, § 2.81.080. Subdivision (b): Gov. Code, § 27722. Subdivision (c): Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515–516.

Rule 18. Appeal Documents

- (a) After submitting the written decision of an appeal, the hearing officer shall deliver to hearing officer staff the audio recording of the proceedings, the hearing packet, the list of all participants at the hearing, any documentary evidence admitted at the hearing, and any pleadings, notices, written communications between the hearing officer and the parties, orders, recommended orders, final orders, or other paper or any electronic media related to the appeal.
- (b) The Office of the County Hearing Officer shall maintain custody of the appeal documents for the period specified in the applicable retention schedule approved by the Board.

Rule 19. Panel Appeals

When an appeal is assigned for hearing by a panel, the chief hearing officer is responsible for the panel's compliance with the obligations of the hearing officer under Rule 15, Rule 16, Rule 17, and Rule 18, except that all substantial determinations by the panel must be by majority vote. Substantial determinations include ruling on a motion, granting or denying a continuance, directing a party to produce evidence, ruling on an evidentiary objection, ruling on the application of a privilege, taking official notice, and the making final decision. The panel may deliberate in private.

Rule 20. Official Record of Proceedings

- (a) **Contents of Official Record.** The official record of proceedings includes all of the following:
 - (1) A cover page prepared by hearing officer staff that identifies the appeal by number, the parties, the name of the hearing officer, the date(s) of the hearing, and the date when the written decision was mailed;
 - (2) A table of contents identifying each document and the sequential page number (or "Bates number") on which it begins; and
 - (3) Everything listed in Rule 18(a), except that if there is a written transcript by certified shorthand reporter, then the audio recording of the hearing does not need to be included, with documents arranged in chronological order and marked with sequential page numbers (or "Bates numbers");
 - (4) A certificate signed by hearing officer staff stating that the official record of proceedings is complete.
- (b) **Electronic Format Permitted.** The official record of proceedings may be prepared entirely in electronic format using Portable Document Format (PDF). If so, then the official record of proceedings must be a locked and certified PDF document, which may be divided into volumes for convenience. If there is no written transcript of the hearing by certified shorthand reporter, the audio recording of the proceedings must be embedded within that PDF document.

- (c) **Cost of Preparation.** Unless otherwise prescribed by statute, a party that requests the official record of proceedings shall bear the actual cost of preparing it.
- (1) A party wishing to request the official record of proceedings must first ask the Office of the County Hearing Officer for an estimate of the cost to prepare the record of proceedings. Hearing officer staff shall then promptly prepare the estimate and inform that party of it.
- (2) A written request for the official record of proceedings is deemed filed with the Office of the County Hearing Officer only when the requesting party has deposited with the Office of the County Hearing Officer the estimated cost of preparation. If the actual cost of preparation is less than the estimated amount, the Office of the County Hearing Officer shall refund the difference to the requesting party when it delivers the official record of proceedings.
- (d) **Preparation.** Upon receiving a written request for a record of proceedings and the requisite deposit, hearing officer staff shall prepare the official record of proceedings. When the official record of proceedings is ready, hearing officer staff shall deliver a copy to each party.
- (e) **Maintenance.** The Office of the County Hearing Officer shall maintain the official record of proceedings for the period described in Rule 18(b).

Reference—Gov. Code, § 27721; Ord. Code, § 2.81.110.

Rule 21. Waiver of Cost to Prepare Official Record of Proceedings

- (a) **Waiver of Cost.** Notwithstanding anything else in these rules, the cost of preparing the official record of proceedings may be waived for a party who meets the qualifications for a fee waiver in the Superior Court of this state.
- (b) **Contents of Application.** A valid application for waiver of the cost of preparing the official record of proceedings must be in writing and signed under penalty of perjury, include all of the information required by Government Code section 68633 for a waiver of court fees, and be presented to the Office of the County Hearing Officer on the form provided for that purpose.
- (c) **Forms.** Hearing officer staff shall prepare, maintain, and make available an application form for a waiver of the cost of preparing the official record of proceedings. The form and each revision shall be reviewed and approved by County Counsel before it is used.
- (d) **Decision on Application.** The CAO may waive the cost of preparing the official record of proceedings for any requesting party that submits a valid application for waiver and satisfies the requirements for a fee waiver under Government Code section 68632.
- (e) **Confidentiality of Personal Financial Information.** Personal financial information provided by an applicant under this rule shall be kept confidential, and shall not be disclosed to any person or agency unless required by court order. By approval of these rules, the Board finds that disclosure of financial information provided by an

applicant under this rule would compromise substantial privacy interests that outweigh the public interest in disclosure.

Reference—Subdivision (a): Ord. Code, § 2.81.110. Subdivision (e): BRV, Inc. v. Superior Court (2006) 143 Cal.App.4th 742, 755.