



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: James R. Helmer
Joseph Horwedel

SUBJECT: SEE BELOW

DATE: 05-31-06

Approved

Deama Sabra

Date

6/5/06

COUNCIL DISTRICT: Citywide

SUBJECT: AGREEMENT BETWEEN THE CITY OF SAN JOSE AND MICHAEL O. BARRY FOR HEARING OFFICER SERVICES

RECOMMENDATION

Approval of the Agreement between the City of San José and Michael O. Barry for hearing officer services, for the period beginning July 1, 2006 through June 30, 2008 with three one-year options exercisable by the City, at an annual salary not to exceed \$88,719.00.

OUTCOME

Provide the City with the means to ensure that parking citation and administrative hearings are conducted in a consistent manner as required under the California Vehicle Code and City Municipal Code.

BACKGROUND

Parking citations have been decriminalized since 1993 and as such the California Vehicle Code requires that each agency provide the opportunity for citizens to contest parking citations at three levels – an Administrative Review, Administrative Hearing and Civil Court Action. The adjudication/hearing process must be conducted in accordance with the California Vehicle Code Section 40215. This section requires that an independent hearing be performed on contested citations, and allows each agency to contract with a qualified individual as a hearing officer.

The hearing officer is required to conduct and render decisions on in-person and mail-in hearings for the City on all appeals related to parking citations. Besides critical decision making skills, the hearing officer must be well versed in various State and local codes, laws, regulations and ordinances. Since March 21, 1994, Mr. Barry has been conducting Administrative Hearings of contested parking citations for the City. Additionally, in 1999, the scope of services for the

Hearing Officer was expanded to include Administrative Citations such as vicious dog and graffiti hearings as well as hearings for other code violations. Mr. Barry also conducts administrative hearings of contested parking citations for community college districts and San José State University, at those agencies's expense. San José's current agreement with Mr. Barry expires on June 30, 2006.

ANALYSIS

Michael O. Barry has been the City's Hearing Officer for over 12 years, and he has consistently demonstrated the ability and decision making skills necessary to carry out the duties of the office. In this capacity, he has been effective and objective in all aspects of the parking citation appeal and the administrative citation hearing process. In addition, Mr. Barry has over 20 years of professional experience as a Court Liaison Officer, Alternative Traffic Hearing Officer and has taken paralegal courses from Santa Clara University School of Law.

Approval of this agreement will ensure that the parking citation and administrative hearings are conducted as required by the state law, and in a consistent manner. The option for three one-year extensions beyond the initial two-year term will allow the City to continue Mr. Barry's services as a hearing officer or seek other options once the initial term has expired. The City Manager or Hearing Officer may terminate this agreement at any time by giving written notice to the other party.

ALTERNATIVES

An alternative to the recommendation is to solicit other hearing officers, which staff will explore for the next term. Given Michael Barry's broad breath of legal and technical experience necessary for the various hearing appeals expected and his performance to date, staff is recommending him for this position at this time.

PUBLIC OUTREACH

Not Applicable

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

The Hearing Officer's salary is already included in the 2006-2007 Proposed Operating Budget and shall not exceed \$88,719.00 annually for the term of this contract.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2006-2007 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0511	Personal Services Department of Transportation	537700	\$20,102,845*	\$177,438	N/A	N/A

*This budget amount is allocated on an annual basis.

CEQA

Not a project


JAMES R. HELMER
Director of Transportation


JOSEPH HORWEDEL
Acting Director of Planning, Building and
Code Enforcement

For questions please contact Amit Kothari, Deputy Director, at 535-3838.