



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: March 13, 2012

Approved

Date

3/14/12

SUBJECT: ADOPTION OF "HEARING OFFICER" AND RELATED "PROCEDURES" TO REPLACE THE 'INDEPENDENT HEARING PANEL' FOR THE LOCAL ENFORCEMENT AGENCY (LEA).

RECOMMENDATION

Adopt a resolution establishing the qualifications and procedures for the appointment of a Hearing Officer(s) for the appeals arising from the Local Enforcement Agency (LEA) and repealing previous resolutions regarding an Independent Hearing Panel.

OUTCOME

This will bring the LEA appeal process into conformance with current state law. Replacing the Independent Hearing Panel will also be in conformance with the stated Council goal to reduce the number of City commissions.

BACKGROUND

The LEA within the Department of Planning, Building and Code Enforcement is certified to enforce state solid waste regulations under authority of the California Department of Resources, Recycling and Recovery ("CalRecycle"), as set forth in Public Resources Code sections 40000 et seq.

The state certification requires that the LEA have an appeal process for the City's enforcement or action relating to the issuance, revocation and denial of solid waste facility permits either before an Independent Hearing Panel, or Hearing Officer.

State law provides for three different types of hearing panels, a three-member panel consisting of Councilmembers, or a three-member Independent Hearing Panel, or a Hearing Officer (Public Resources Code 44308; CCR, Title 14, Sections 1805-18060). Further, prior state regulatory requirements specified that an Independent Hearing Panel be created when there are publicly owned or operated solid waste facility or disposal sites located within the LEA's jurisdiction. With the prior adoption of Resolutions 71488 (2003) and 73768 (2007) the Council established an Independent Hearing Panel (IHP) in compliance with state LEA certification regulations at that time, and because the City owns five closed solid waste facilities.

All three current IHP Members have served two, four-year terms, and are term-limited. Since the last IHP appointments were made, state law and regulatory certification standards have changed. New certification standards now allow the City to use a single-member Hearing Officer in place of the existing three-member IHP, to meet state certification requirements.

ANALYSIS

State law requires the adoption of hearing procedures prior to the governing body's appointment of a Hearing Officer (Public Resources Code Sections: 44308 & 44308(d)). The LEA recommends the adoption of the resolution to adopt Hearing Officer Procedures, allowing the Department of Planning, Building, Code Enforcement – Director, or Deputy Director to establish a list of Hearing Officer candidates selected for their "legal, administrative, or technical abilities relating to solid waste management." The proposed qualifications for Hearing Officers are: that they must be under contract with the City of San José's Rental Dispute Program; that they are familiar with administrative hearings; and that they are a California lawyer in good standing. The reason that staff is recommending the use of Rental Dispute Program Hearing Officers is that the list of available Hearing Officers is well maintained because of the constant workload of that program. Because the expected number of LEA appeals is very low, it would be administratively difficult to maintain a separate ready list of potential Hearing Officers.

The proposed resolution contains hearing procedures in accordance with state law. The procedures provide for an informal hearing without formal rules of evidence. The hearings will also be subject to the Brown Act. An aggrieved person may appeal to the California Integrated Waste Management Board to review a written decision of the Hearing Officer or the failure of the Hearing Officer to issue a decision or to hold a public hearing where required by law. The estimated time for appeal to the California Natural Resources Agency – CalRecycle is six to nine months. This estimate is based on statutory notice and hearing provisions. The time for completing appeal proceedings could be longer or shorter if the aggrieved person elects to file a petition for review in Superior Court as allowed under state law.

EVALUATION AND FOLLOW-UP

Adoption of this Resolution to establish the qualifications and procedures for appointment of Hearing Officer(s) for the appeals arising from LEA and rescinding previous resolutions regarding an Independent Hearing Panel is not anticipated to require additional Council action.

PUBLIC OUTREACH

The maintenance of a Hearing Panel or Hearing Officer is a condition of maintaining certification as the Local Enforcement Agency empowered to enforce state solid waste regulations. The elimination of the Independent Hearing Panel and attendant procedures, and adoption of procedures for establishment of a "Hearing Officer" will provide a more efficient and responsive public hearing process and public input process related to the enforcement of state solid waste standards.

FISCAL IMPLICATIONS

There is no direct financial impact on the City of San José. Under state law, members of a Hearing Panel or a Hearing Officer are entitled to receive per diem and necessary expenses while conducting the hearing. LEA staff recommends that a per diem in the amount of \$200 be paid to the Hearing Officer. The per diem shall be paid from the Local Enforcement Agency Grant provided annually to the LEA by the California Department of Natural Resources - CalRecycle, to the extent such funds are available. A minimal reduction in the per diem cost would result from a reduction from the current three-member panel to a single-member hearing officer.

COORDINATION

This report has been coordinated with the City Attorney's Office.

CEQA

This is not defined as a Project under CEQA and is not subject to the California Environmental Quality Act.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Jaime Matthews, Division Manager, at 408-535-8288.