

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 1-405, 1-407, 1-408, AND 1-409 OF THE FRESNO MUNICIPAL CODE RELATING TO THE ADMINISTRATIVE HEARING PROCEDURE.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 1-405 of the Fresno Municipal Code is amended to read:

SECTION 1-405. HEARING OFFICER. The City Manager shall appoint persons to serve as hearing officers under the following rules:

(a) Permanent Hearing Officer. The City Manager may appoint a person or persons to serve as permanent hearing officers [with compensation on a flat rate or hourly basis]. Permanent hearing officers shall be hired ~~under a~~ [for a one year] contract with [an annual option to renew, subject to thirty (30) days' notice prior to the termination of the contract] ~~a minimum one year term~~. The hearing officer may not be terminated without cause and the basis of termination shall not be related to the outcomes of hearings. A permanent hearing officer may be appointed to hear all types of administrative hearings or may be appointed to hear a select category of hearings or a select number of hearings. A ~~person may not be appointed to serve as a permanent hearing officer if he or she has served as a temporary hearing officer within a one year period.~~

(b) Temporary Hearing Officer. The City Manager may appoint a person or persons to serve as temporary hearing officer on an as needed basis for those hearings in which the city does not have a permanent hearing officer or where the permanent hearing officer(s) is/are unable to serve because of the existence of a personal conflict or for practical reasons or where the Code otherwise requires appointment of a person to hear a particular class of hearings. The following persons may serve as temporary hearing officers:

(1) Any person willing to serve without compensation or valuable consideration or promise of future compensation or valuable consideration;

(2) Any person serving for compensation [shall be compensated on a flat rate or hourly basis]~~so long as that person has not previously served as a temporary hearing officer for the city within a one-year period;~~

(3) A person serving for compensation who has previously served as a temporary hearing officer within the past year may serve as a temporary hearing officer upon written consent of the appellant or the person whose property or interest is the subject of the hearing after disclosure by the city of the person's prior service for the city, including, if requested, disclosure of the final determination of any prior decision(s) by the hearing officer;

(4) A person serving for compensation who has served

as a temporary hearing officer within a year may serve without the written consent of the appellant where the person is randomly selected from a list or panel of at least four persons who have all agreed to serve as temporary hearing officers under such a random selection process;

(5) A salaried city staff member who regularly supervises at least ten people and who does not, and has not within the previous twelve months, directly supervised the division or unit of the staff member responsible for representing the city in the appeal and who has not participated in the order, citation, decision or determination being appealed may serve as a temporary hearing officer; or

(6) A State Administrative Law Judge under a contract with the Office of Administrative Hearings or an arbitrator employed by a private independent arbitration service, such as JAMS or the American Arbitration Association.

(c) Multiple Hearing Officers. Where more than one hearing officer, whether temporary or permanent, is available to hear the same administrative hearing, selection of the hearing officer shall be determined either by the terms of the hearing officer's contract or by random process.

SECTION 2. Subsection (e) of Section 1-407 of the Fresno Municipal Code is amended to read:

SECTION 1-407. FILING A NOTICE OF APPEAL.

(e) Notice of Hearing. Upon receipt of an appeal, or if notice of insufficiency is given in accordance with this section, upon receipt of an amended appeal within the time specified, the hearing officer shall cause one copy to be stamped indicating the date of receipt thereof, and shall immediately forward the other copy to the officer or employee whose order, citation, decision, or determination is being appealed. The hearing officer shall set the appeal for hearing and shall give to the appellant and to the officer or employee whose order, citation, decision, or determination is being appealed not less than fifteen calendar day's written notice of the date, time, and place of hearing. [The hearing officer shall schedule each appeal hearing for a specific date and time. No appeal hearing shall be scheduled at the same time as any other hearing. Each party shall provide the hearing officer with a reasonable time estimate of how long it will take to present its case. Each hearing shall be timed and must be completed within the allotted amount of time, which is reasonably based on the parties' estimated time requirements.]The appellant, or his/her authorized representative, may waive the fifteen calendar days written notice, so long as said waiver is in writing and received by the hearing officer. The notice of the hearing to the appellant shall include a statement as to the appellants' rights as provided in subsection 1-507(c).

SECTION 3. Subsections (a), (b), and (d) of Section 1-408 of the Fresno Municipal Code are amended to read:

SECTION 1-408. CONDUCT OF HEARING.

(a) Continuance. ~~At the hearing officer's discretion or u~~Upon good cause shown, the hearing officer may continue the hearing by written notice before the scheduled hearing or orally at or during the hearing. [Failure of the parties to exchange documents in advance of the hearing does not constitute good cause, and is not a basis for a continuance.]

(b) Hearing. At the hearing, the officer or employee who issued the order, citation, decision, or determination or his or her designee shall present evidence in support of the findings or reasons upon which the order, citation, decision, or determination, was based. The appellant, or any individual authorized in writing to represent the appellant, may then present evidence in support of the contentions made in the notice of appeal. The hearing shall be informally conducted. [The hearing officer shall call each hearing and conduct the hearing in an orderly manner. The hearing officer shall maintain control over the order of evidence and order of witnesses called. The hearing officer shall maintain processes and procedures to facilitate an efficient and effective handling of multiple hearings.]

...

(d) Evidence. ~~The rules of evidence provided by State statute in civil and criminal actions shall not apply, except that irrelevant and unduly repetitious evidence may be excluded in the hearing officer's discretion.~~ [All administrative hearings shall be governed by the following rules of evidence:

(1) Oral evidence shall be taken only on oath or affirmation which shall be administered by the hearing officer. Only credible testimony shall be considered by the hearing officer.

(2) Each party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the appellant does not testify in his/her own behalf, the appellant may be called and examined as if under cross-examination.

(3) Such hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law rule or statute which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(4) Copies of the reports and records of any governmental agency, division, or bureau will be accepted as evidence in lieu of the original thereof.]

SECTION 4. Subsection (g) of Section 1-409 of the Fresno Municipal Code is amended to read:

SECTION 1-409. HEARING OFFICER AUTHORITY.

(g) Limitations. The hearing officer shall not have authority to waive any requirements of the Code or law. [The hearing officer is required to adhere to any citation amount set in the Code or Master Fee Schedule and may not increase or decrease the amount imposed on the parties. The parties themselves maintain the discretion to reduce citation amounts in order to independently settle the dispute.]

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2014  
Mayor Approval/No Return: \_\_\_\_\_, 2014  
Mayor Veto: \_\_\_\_\_, 2014  
Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Mary Raterman-Doidge Date  
Deputy

MRD:prn [65030prn/ord] 07-10-14