

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTIONS 1-405, 1-408, AND
ADDING SECTION 1-412 TO THE FRESNO MUNICIPAL
CODE, AND AMENDING SECTION 1-510 OF THE
FRESNO MUNICIPAL CODE RELATING TO CODE
ENFORCEMENT HEARINGS

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.

(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. [The compensation for the hearing officer shall not exceed \$100,000 per year or \$10,000 per month, including reimbursement for costs, without a majority vote approval of the Council.] Permanent hearing officers shall be hired for a one year contract with an annual option to renew, subject to thirty (30) days' notice prior to termination of the contract. 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.

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Date Adopted:
Date Approved
Effective Date:
City Attorney Approval:



Ordinance No. _____

(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 City Attorney's Office shall monitor the time allocated each month by the hearing officer and any time the hours exceed sixty-four (64) hours per month the City Attorney's Office shall notify the City Manager of a need for temporary hearing officers. The City Manager shall retain at least two temporary hearing officers to serve on an as needed basis when the permanent hearing officer is incurring in excess of sixty-four (64) hours per month in preparation for and conduct of appeal hearings. Temporary hearing officers may, by contract, be assigned particular types of matters.] 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;

(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;

(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.

[(d) The City Attorney's Office through Contract Compliance shall provide oversight, as needed, to ensure decisions made by the hearing officer are in compliance with the appropriate municipal code and Master Fee Schedule fines. Contract Compliance shall compile quarterly or as needed statistical reports summarizing case types, dispositions, and fines assessed.]

SECTION 2. Section 1-408(j) of the Fresno Municipal Code is amended to read:

(j) Recording. ~~The proceedings at the hearing shall be recorded to a cassette tape, a CD ROM, a video tape, a DVD or similar media. In addition to any one of the above, [Code Enforcement appeal hearings shall be digitally sound recorded and made available for inspection and copying in the City Clerk's Office or on the City Clerk's website. Additionally,]~~ the proceedings may also be recorded by a certified shorthand reporter. If an appellant requests a certified shorthand reporter the cost of the reporter shall be borne by the appellant.

SECTION 3. Section 1-412 of the Fresno Municipal Code is added to read:

SECTION 1-412. RECORDS AND HEARING ROOM.

(a) The City Clerk shall be responsible for maintaining all records of code enforcement appeals. Records shall be maintained in a

manner such that a member of the public may inspect and copy records, except for such time when the records shall be in the possession of a hearing officer as necessary to prepare for, hear, and decide appeals.

(b) The City Clerk shall be responsible for maintaining the “docket” or schedule for all code enforcement appeal hearings. The docket shall be made available for inspection and made available for public viewing on the City Clerk’s website.

(c) The City Manager shall designate an adequate and suitable meeting room in City Hall for code enforcement appeals. Thereafter, in the designated meeting room code enforcement appeals shall take priority for scheduling over all other matters upon a minimum of seven (7) days’ notice.

SECTION 4. Section 1-510 of the Fresno Municipal Code is amended to read:

SECTION 1-510. PERSONAL OBLIGATION.

Any costs or penalties subject to collection under this article may be recovered as a personal obligation against the responsible party and may be referred to a collection agency or the City Attorney’s Office for collection. Upon referral of these costs and obligations, the collection agency and the City Attorney’s Office may seek collection through any legal means provided to them, including judicial action. Nothing in this section shall be affected by or affect the city’s use of any other procedure provided in this article or by law to collect unpaid costs and penalties. In a judicial action to recover abatement costs, the City Attorney’s Office may elect to recover attorney’s fees. In any action in which

the City Attorney's Office elects to recover attorney's fees under this section, attorney's fees will be recovered by the prevailing party. [The City Attorney shall take action to obtain a personal judgment, in addition to any liens, for unpaid penalties, costs, fines, and any other form of damages due to the City when the amounts owed exceed \$1,000, the amounts reasonably appear to be collectible, and it will be cost effective to pursue judgment and collection.]

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 _____, 2015.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2015
Mayor Approval/No Return: _____, 2015
Mayor Veto: _____, 2015
Council Override Vote: _____, 2015

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr [Date]
Assistant City Attorney

KBD:ns [68985ns/kbd]- 9/17/15