



**County Counsel
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
J. STEVEN WORTHLEY
District Four
MIKE ENNIS
District Five

AGENDA DATE: December 4, 2018

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
County Counsel Sign-Off	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>

CONTACT PERSON: Jeff Kuhn PHONE: 636-4950

SUBJECT: Streamlining County Administrative Hearing and Appeal Processes

REQUEST(S):

That the Board of Supervisors:

1. Receive a presentation on the County's administrative hearing and appeal processes.
2. Direct County Counsel to return with an agenda item to amend the County Ordinance Code to streamline the administrative hearing and appeal processes and establish the position of County Hearing Officer.

SUMMARY:

Under State law and the Tulare County Ordinance Code, many County departments are required to conduct administrative hearings as part of their enforcement of State law and County ordinances. For example, the County Resource Management Agency Director, or his or her designee, must afford persons the opportunity for an administrative hearing during the code enforcement process. Likewise, the Agricultural Commissioner, the Fire Chief, the Health and Human Services Agency Director, the County Health Officer, and the Tax Collector must provide such opportunities as part of their enforcement actions.

Over the years, the process for the various Departments and the Board of Supervisors for administrative hearings and appeals has become unwieldy. The Tulare County Ordinance Code now contains confusing and/or inconsistent provisions regarding the type of informal or formal review to be provided by the Departments, what happens if

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a participant is not satisfied with the result of the Department review, when a formal hearing is to be provided, whether an appeal is to the Board of Supervisors or directly to court, what type of hearing must be provided if the appeal is heard by the Board of Supervisors, and what statute of limitations applies to an appeal to court.

County Counsel believes the County should establish a uniform procedure for administrative hearings and appeals. County Counsel believes that, except as otherwise required by law, the process should include (1) an informal review at the Department level; (2) a formal hearing, if otherwise required or upon request, before a County Hearing Officer; and (3) appeal from the decision of the County Hearing Officer directly to Superior Court. Under this procedure, the Board of Supervisors would not need to hold administrative hearings or to consider appeals from administrative hearings, such as the recent Fancher appeal, unless otherwise required by law. Note that this would not affect the Board's role in considering appeals from Planning Commission decisions, or certain personnel matters, but would streamline the hearing and appeal processes for other matters.

This would entail the establishment of the position of County Hearing Officer, as authorized by Government Code section 27720 *et seq.* In general, these statutes provide:

- The position is a County office.
- The duties of the office are to conduct hearings for the County or any board, agency, commission, or committee of the County.
- The Hearing Officer may be authorized by ordinance or resolution to conduct any hearing provided by state law or County ordinance, and to take the other steps appropriate for a hearing (issuing subpoenas, receiving evidence, administering oaths, ruling on questions of law and the admissibility of evidence, and preparing a record of the proceedings).
- The Hearing Officer may be authorized to make a final decision, or only to recommend a final decision.
- The governing body may choose to have the Hearing Officer conduct a hearing at a board meeting, with the governing body present.
- The Hearing Officer must be a current California attorney with at least five years of experience prior to being appointed.
- Other local public agencies may contract with the County to use the Hearing Officer, and must reimburse the County for the expense.
- The County may establish the position as an employment position, or may hire independent contractors to serve as the Hearing Officer. If the independent contractor option is selected, case law requires a rotation of Hearing Officers rather than a single officer, and the statutes specifically authorize contracting with the State's Office of Administrative Hearings to provide an administrative law judge for individual cases.

As noted above, County Counsel recommends having the Hearing Officer make the final administrative decision, and hiring a rotation of independent contractors as Hearing Officers, including the option of contracting with the State's Office of Administrative Hearings.

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FISCAL IMPACT/FINANCING:

Each department would be responsible for covering the expense of the Hearing Officer for its hearings. The ultimate financial result is difficult to predict, but simplified, uniform procedures should result in no net County cost.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Streamlined, consistent administrative hearing and appeal procedures will enhance the organizational performance of County Departments.

ADMINISTRATIVE SIGN-OFF:



Jeffrey L. Kuhn
Chief Deputy County Counsel

Cc: County Administrative Office

BBG/JLK/20171497/10/23/2018 1241637

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF)
Streamlining County Administrative) Resolution No. _____
Hearing and Appeal Process)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

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