



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Health
Department No.: 041
For Agenda Of: June 15, 2010
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Takashi Wada, MD, MPH
Director Public Health Director & Health Officer
Contact Info: Jennifer Bernstein, 681-4934
Interim Director, Environmental Health Services
SUBJECT: Appointment of a Hearing Officer for Solid Waste Issues

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: Select_Concurrence

Recommended Actions:

That the Board of Supervisors:

- a) Approve a change in the process used to hear appeals for Local Enforcement Agency actions on Solid Waste Issues from a Hearing Panel to a Hearing Officer.
- b) Direct staff to establish a contract with the California Office of Administrative Hearings, or their respective designee, to act as Hearing Officer to hear all appeals brought before them pursuant to section 44308(d) of the Public Resources Code.

Summary Text:

Environmental Health Services is designated as the Local Enforcement Agency (LEA) for solid waste issues in Santa Barbara County by the California Integrated Waste Management Board (CIWMB). In its capacity as the LEA, Environmental Health Services is responsible for enforcing all applicable regulations at all solid waste facilities and sites in Santa Barbara County. Prior to September 2004, Section 44308 of the Public Resources Code required the LEA to designate a Hearing Panel to hear and decide appeals to any permit conditions proposed by the LEA or any enforcement actions initiated by the LEA. In September 2004, the code was expanded to add an option (44308(d)) for designating a Hearing Officer for this purpose.

Your Board has historically designated a 3-person Hearing Panel consisting of appointees from two Supervisors and one appointee with technical expertise in solid waste issues recommended by Environmental Health as required by the code. The requested action would approve use of a Hearing

Officer rather than an appointed Hearing Panel for any appeals of LEA actions and would direct staff to establish a contract for the Hearing Officer services.

Background:

Changing the process to utilize a Hearing Officer for appeals will eliminate the need to search for, identify, nominate, appoint and train individuals to serve on a Hearing Panel for a term of four years. To date, Santa Barbara County has never needed to convene this panel to hear an appeal so these efforts to nominate, appoint and train individuals are expended and yet they may never be called into service.

The Administrative Law Judges provided by the California Office of Administrative Hearings (OAH) do not require training on receiving evidence or hearing procedures and protocols. Using an Administrative Law Judge as a Hearing Officer will ensure a professional and impartial appeal hearing and decision; as well as save time and expense for the Board of Supervisors, LEA staff and County Counsel.

If approved by your Board, Environmental Health Services will enter into an agreement with the OAH for an Administrative Law Judge to serve as a Hearing Officer to provide professional and impartial appeals hearings and decisions.

The PHD has conducted thorough research and found that several counties have changed, or are in the process of changing, from a Hearing Panel to a Hearing Officer. Several counties (including Ventura, Sacramento, Tulare, and Madera) have named the California OAH as their Hearing Officer.

About the State Office of Administrative Hearings

The Office of Administrative Hearings (OAH) is a quasi-judicial tribunal that hears administrative disputes. It was established by California Legislature in 1945. The services of the OAH are available to governmental agencies pursuant to the Government Code Section 27727. The OAH provides independent Administrative Law Judges (judges) to conduct hearings for over 150 state and 800 local government agencies. The OAH has four regional offices with the office in Los Angeles being the closest to Santa Barbara.

The OAH provides both adjudication and alternate dispute resolution services. When there is a disagreement with an action intended to be taken by certain government agencies against an individual, business, or another agency, a hearing before the OAH may be requested. The judges used by the OAH are fully independent of the agencies whose attorneys appear before them. The judge has the same relationship with each party, that of a neutral fact-finder.

These judges preside over the hearings in a manner similar to civil court trials. The hearings are open to the public. Each party at the hearing is given an opportunity to make an opening statement, call witnesses, and offer relevant evidence. After all the evidence is submitted, the parties may make closing arguments, orally or in writing. The presiding judge will then prepare a detailed written decision.

Retaining the Office of Administrative Hearings

Any county or local public agency wishing to use the services of the OAH must have a contract for services in order to reserve hearing dates. Once a contract is in place, an agency may reserve hearing dates by filing documents with the calendar clerk at the regional office of the OAH.

The filing fee is currently \$66/case. The rate for the judge is currently \$187/hr which is applied to travel, pre-hearing preparation, time spent in the actual hearing and time spent reviewing testimony and evidence needed to reach a decision. These services will be paid for by an agency fund maintained in the Public Health Department which was established to pay for independent services for the LEA. The funding for this comes from \$.03/ton collected from landfill operators.

Hearings can be held in the OAH office in Los Angeles or a request can be made to hold the hearing in Ventura or Santa Barbara. Hearings must be scheduled, heard, and a decision rendered within these specified periods of time:

- The LEA must schedule the hearing within 15 days of receiving a request for a hearing.
- The LEA must request a statement of issues from the complainant and notify the complainant of the date, time and location of the hearing.
- The hearing must be held within 30 days after receiving the request for a hearing.
- Within 5 days of the completion of the hearing, the Hearing Officer must provide a decision.

Fiscal and Facilities Impacts:

Budgeted: No.

Fiscal Analysis:

Approval of this change in the Solid Waste Local Enforcement Agency (LEA) appeal process from a Hearing Panel to a Hearing Officer will eliminate the need to appoint and train individuals to serve on a Hearing Panel for a term of four years. There is no fiscal impact unless a hearing is convened. A contract will be established with the California Office of Administrative Hearings, or their respective designee in the event a hearing is requested. Standard purchasing protocols will be followed when establishing the contract. The funds for the contract will be made available from the Solid Waste Agency Fund 1385 established for independent services.

Approval of this recommendation will not result in a need for any additional facilities.

Special Instructions:

Please email an electronic copy of the Minute Order to PHD Contracts Unit at: PHDCu@sbcphd.org.

Attachments:

Attachment A: Local Enforcement Agency Procedures to Appoint a Hearing Officer

Attachment B: Local Enforcement Agency Hearing Officer Qualifications

Authored by:

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