

RESOLUTION NO. 2015-XX

RESOLUTION OF THE XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS REPEALING THE SOLID WASTE (INDEPENDENT) HEARING PANEL, APPROVING PROCEDURES AND QUALIFICATIONS FOR THE APPOINTMENT OF A HEARING OFFICER, AND CREATING A HEARING OFFICER FOR LOCAL ENFORCEMENT AGENCY HEARING ON PETITIONS PURSUANT TO CALIFORNIA PUBLIC RESOURCES CODE SECTION 44307, 44308, AND 44310.

WHEREAS, California Public Resources Code (PRC) Section 44308 sets forth procedures for designation of a hearing officer, PRC Section 44310 sets forth the procedures for requesting and conducting such hearings; and

WHEREAS, on DATE, the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS adopted Resolution XX-XX designating the XXX COUNTY OR CITY DEPARTMENT NAME as the Local Enforcement Agency (LEA) and certified by CalRecycle pursuant to PRC 43200, et. seq. and Title 14 California Code of Regulations (CCR) 18051 for the permitting, inspection, and enforcement of solid waste handling and disposal sites; and

WHEREAS, on DATE, XXX COUNTY OR CITY DEPARTMENT NAME was certified as the designated Local Enforcement Agency (LEA) pursuant to PRC 43200-43222 and Title 14 California Code of Regulations (CCR) 18051; and

WHEREAS, PRC 44308 authorizes the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS to appoint a hearing officer to hear appeals received by the LEA pursuant to PRC 44307 if it also adopts procedures for making the appointment and adopts qualifications that the hearing officer is required to meet; and

WHEREAS, on DATE, the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS adopted Resolution XX-XX which established a Hearing Panel OR an Independent Hearing Panel for hearing appeals received by the LEA pursuant to PRC 44307; and

WHEREAS, on DATE, the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS replaces/repeals Resolution XX-XX which established a Hearing Panel OR an Independent Hearing Panel for hearing appeals received by the LEA pursuant to PRC 44307; and

WHEREAS, the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS has prepared the procedures for appointment of a hearing officer and qualifications for a hearing officer pursuant to PRC 44308(d).

NOW THEREFORE BE IT RESOLVED, that the attached procedures for the appointment of hearing officer and the qualifications set forth therein for a hearing officer pursuant to PRC 44308(d), are hereby adopted.

BE IT FURTHER RESOLVED, that NAME OR LAW FIRM OR COUNTY/CITY POSITION is hereby appointed as hearing officer.

BE IT FURTHER RESOLVED, that NAME OR LAW FIRM OR COUNTY/CITY POSITION is hereby appointed as the alternate hearing officer.

Commented [KD1]: (This may be used if the LEA determines a need to have an alternate for timeline constraints).

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PASSED AND ADOPTED at a regular/XXX meeting of the XXX CITY COUNCIL OR COUNTY BOARD OF SUPERVISORS held on this XX day of MONTH, YEAR, by the following vote:

AYES: TITLE NAMES

NOES: TITLE NAMES OR NONE

ABSENT: TITLE NAMES OR NONE

ABSTAIN: TITLE NAMES OR NONE

TITLE, CITY COUNCIL OR COUNTY BOARD

ATTEST:

CLERK

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EXHIBIT A

PROCEDURES FOR APPOINTMENT AND QUALIFICATIONS OF HEARING OFFICERS FOR HEARINGS ON PETITIONS RELATED TO LOCAL ENFORCEMENT AGENCY PROCEEDINGS

1. Pursuant to the provisions of the California Public Resources Code (PRC) concerning activities of the Local Enforcement Agency (LEA), including but not limited to those provisions set forth in PRC Sections 44308 et seq., the **Secretary/Clerk of the XXX County Board of Supervisors or City Council OR XXX LEA Director/Manager OR XXX Environmental Health Director OR other qualified person** shall determine, consistent with the requirements set forth below, a proposed hearing officer, whose qualifications shall be set forth and presented to the **Board of Supervisors or City Council** for consideration of appointment as hearing officer.
2. A hearing officer approved by the **Board of Supervisors or City Council** shall conduct all proceedings in accordance with the applicable provisions set forth in the Public Resources Code.
3. **For consideration as a hearing officer in the above described role, a person shall be...**
4. For consideration as a hearing officer, a person shall demonstrate experience and familiarity with the current law in the state of California concerning solid waste issues.
5. For consideration as a hearing officer, a person shall demonstrate to the satisfaction of the **Clerk** of the **Board of Supervisors or City Council** or his/her designee that the person possesses a judicial demeanor consistent with the impartial conduct of any proceedings.
6. The **Board of Supervisors or City Council** shall consider and take action on the recommendation received from the **Clerk of the Board or City Council**. Any such appointment shall be effective until further notice unless terminated earlier by either party with 30-day notice.
7. Additional hearing officers may be appointed who may serve on a rotational basis.

Commented [KD2]: The HO needs to meet 44308(d). Must not be a conflict of interest and shall be independent of the "operating unit" as defined in 14 CCR 18011. May refer to 44308(b)(2)- IHP is selected for their legal, administrative or technical abilities in areas related to solid waste management.

EXHIBIT B

PROCEDURES FOR ADJUDICATORY HEARINGS

Section 1. Application

(a) The hearing procedures under this Article shall govern all hearings and appeals which the Hearing Officer is authorized or required to conduct pursuant to the California Public Resources Code (PRC). To the extent that the procedures set forth in this Article conflict with the PRC, the PRC shall control.

(b) Without limiting the generality of subsection (a), hearings conducted before the Hearing Officer shall be in accordance with PRC Section 44310.

Section 2. Scope of Formal Review

The Hearing Officer shall hear and review an appeal of the LEA's administrative determination or a petition alleging the LEA's failure to act in accordance with the laws or regulations specified in PRC Section 44307, taking into account:

(a) All of the material on which LEA staff based its determination or its decision to not act, including state law and all other applicable laws;

(b) The reasons given by the appellant or the petitioner for requesting Hearing Officer review;

(c) Any additional relevant documentary and, testamentary material submitted by the appellant or the petitioner; and

(d) Any further information which the Hearing Officer in its discretion obtains by request or investigation at the proceedings in order to insure a fair, full and impartial review of the claim.

Section 3. Conduct of the Hearing

Hearings shall not be conducted according to technical rules of evidence, however:

(a) Oral evidence shall be taken only on oath or affirmation;

(b) Admissibility of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state;

(c) Exclusion of evidence. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time;

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration;

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing;

(f) All evidence must be part of the record and the Hearing Officer shall not conduct independent investigations or engage in off-the record conversations with witnesses or parties regarding the matter under consideration by the Hearing Officer;

(g) In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter related to solid waste, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the Hearing Officer,

Section 4. Rights of Parties

Each party shall have the right:

(a) To call and examine witnesses on any matter relevant to the issues of the hearing;

(b) To introduce documentary and physical evidence;

(c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though that matter was not covered in the direct examination. If an appellant does not testify on his or her behalf, he or she may be called and examined as if under cross-examination;

(d) To impeach any witness regardless of which party first called the witness to testify;

(e) To introduce rebuttal evidence;

(f) To be represented by any person who is lawfully permitted to so represent.

Section 5. Subpoenas

(a) The provisions of Article 11 of Chapter 4.5 of the California Government Code, Section 11450.05 et seq., entitled "Subpoenas," shall apply to the conduct of hearings held by the Hearing Officer;

(b) Without limiting the generality of subsection a, above, reference is made to the provisions of Government Code Section 11450.20 (a) which states: "Subpoenas and subpoenas duces tecum shall be issued by the agency [LEA] or the presiding officer at the request of a party or by the attorney of record for a party, in accordance with the Sections 1985 to 1985.4, inclusive of the Code of Civil Procedure;"

(c) The Hearing Officer shall be considered the presiding officer for purposes of enforcing the provisions of Government Code Section 11450.05 et seq.

(d) The provisions of Government Code Section 11450.05 et seq. in their current form are set forth in Appendix A.

Section 6. Findings and Order

(a) Within five (5) days following the conclusion of the hearing, the Hearing Officer shall make written findings of fact, based upon the evidence received at the hearing to support its decision and shall issue an order affirming, modifying, or overruling the determination or order of the LEA under appeal or the subject of the petition;

(b) The decision of the Hearing Officer shall be final and conclusive pursuant to PRC Section 45017. An appeal may be filed with CalRecycle pursuant to PRC Section 45030 then to the Superior Court pursuant to PRC Section 45040;

(c) The Secretary shall be charged with the responsibility of providing a copy of the Hearing Officer's decision to the parties. The Secretary shall provide a copy of the decision to the appellant or the petitioner by United States mail or by personal service at the address listed on the appeal or the petition.

Section 7. Record

A record of the entire proceedings before the Hearing Officer shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Hearing Officer. A copy of the tape or transcript of the proceedings shall be available to all parties upon request and upon prepayment of the fee prescribed by the **Board of Supervisors or City Council**.

Section 8. Continuances

To the extent permitted under the PRC, the Hearing Officer may grant continuances for good cause shown. All time limits specified herein may be extended upon a showing of good cause.

Section 9. Oaths

The Hearing Officer has the power to administer oaths and affirmations.