



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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CONSENT
 January 15, 2008

Honorable Mayor and
 Members of the City Council

Title: Report Back: Panel of Hearing Examiners

Location/Council District: Citywide

Recommendation: Adopt a **Resolution:** 1) Directing that staff refer all proposed applicants for the hearing examiner panel, established pursuant to Sacramento City Code section 8.04.070, to the Public Employee and Personnel Committee for review and recommendation prior to the City Council's appointment of new hearing examiners; and 2) Directing staff to prepare and bring forward to the Law and Legislation Committee an ordinance that a) makes the panel of hearing examiners subject to Article XV of the City Charter and the City Council and Commission Appointment Procedure Reform Ordinance of 1983; and b) provides objective criteria for the panel of hearing examiners to consider when granting continuances and modifying fines and penalties.

Contact: Ron O'Connor, Code Enforcement Manager, (916) 808-8183

Presenters: None

Department: Code Enforcement

Division: Neighborhood Code Compliance, Business Compliance, and Housing & Dangerous Buildings

Organization No: 4651, 4652 & 4653

Description/Analysis

Issue: This report provides information to the City Council, requested by Council members Waters and Sheedy on December 18, 2007, regarding 1) the current process for appointing hearing examiners; 2) the ability of hearing examiners to grant continuances in cases pending before them; 3) the number of people appearing before the hearing examiners during calendar year 2007 who were granted 2 or more continuances; and, 4) the ability of hearing examiners to modify fines, timelines, and other staff recommendations in cases pending before them. Furthermore, it makes recommendations for modifications to the appointment process and to the powers of the panel of hearing examiners.

Policy Considerations: None

Commission/Committee Action: None

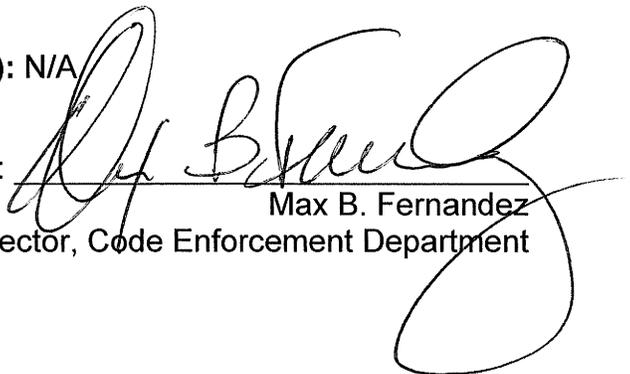
Environmental Considerations: None

Rationale for Recommendation: P&PE Committee review of proposed hearing examiner panel appointees is consistent with the Council Rules of Procedures, providing a fair and open process for selecting such appointees. Referral of City Code amendments to the Law & Legislation Committee is consistent with the Council Rules of Procedure and is intended to result in fair and reasonable exercise of discretion by the hearing examiners by providing additional objective criteria to guide exercise of such discretion.

Financial Considerations: N/A

Emerging Small Business Development (ESBD): N/A

Respectfully Submitted by:


Max B. Fernandez
Director, Code Enforcement Department

Recommendation Approved:


Ray Kerridge
City Manager

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Attachment 1**BACKGROUND INFORMATION:**

This report addresses questions and concerns raised by the City Council at its December 18, 2007, meeting regarding 1) the process for appointing hearing examiners; 2) the ability of hearing examiners to grant continuances in cases pending before them; 3) the number of people appearing before the hearing examiners during calendar year 2007 who were granted 2 or more continuances; and, 4) the ability of hearing examiners to modify fines, timelines, and other staff recommendations in cases pending before them.

The panel of hearing examiners that was the subject of the December 18, 2007, City Council staff report, is the panel that the City Council appoints pursuant to City Code section 8.04.070. Section 8.04.070 provides "[i]n order to hear cases brought by the department head under the provisions of this code [the Nuisance Code], the city council shall appoint a panel of hearing examiners, from which one hearing examiner on a rotating basis shall hear cases brought by the department head. Such examiners shall serve at the pleasure of the city council. A hearing examiner may not be a city employee." Over the years the types of cases that come before these hearing examiners has gradually expanded (either by ordinance or by City policy) beyond just Nuisance Code cases to the point that they now hear a wide variety of administrative appeals.

1) The only guidance the City Code provides regarding the appointment process of the hearing examiners is contained in Section 8.04.070, which provides that the "city council shall appoint a panel of hearing examiners." Unlike City Charter section 230 and City Code chapter 2.40 (the "City Council and Commission Appointment Procedure Reform Ordinance of 1983") which provide detailed procedures for the appointment and confirmation of members of boards and commissions, including the involvement of the Personnel and Public Employees Committee, City Code section 8.04.070 does not elaborate on a process or procedures to follow in the appointment of hearing examiners.

2) In terms of the hearing examiners' ability to grant continuances in cases pending before them, City Code section 8.04.200 provides as follows: "The hearing examiner may, upon request of the owner of the premises or upon request of the department head, grant continuances from time to time for good cause shown, or upon his or her own motion." This means is that the hearing examiners have been vested with tremendous discretion to grant continuances in Nuisance Code cases. The City Code provides the hearing examiners with this same discretion in other contexts as well, e.g., tobacco retailers license appeal hearings (§5.138.130), taxicab license appeals (§5.136.150), and administrative penalty appeals (§1.28.010).

3) In calendar year 2007, 34 people appearing before the hearing examiners were granted 2 or more continuances (out of a total of 708 cases.)

4) In terms of the hearing examiners' ability to modify fines, timelines, and other staff recommendations in cases pending before them, City Code section 8.04.410 provides the hearing examiner (sitting as the delinquency lien hearing officer) with the ability to "make such revision, correction or modification" of the fees "as he or she may deem just . . ." in Nuisance Code cases. Furthermore, in the context of administrative penalties, "[t]he hearing examiner may affirm the administrative penalty imposed by the city, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice." (§1.28.010(D)(4)(f)(i).) Again, the hearing examiners have been vested with a great deal of discretion to reduce fees and penalties.

The hearing examiners are also granted a great deal of discretion to determine the timeline within which a property owner must bring his property into compliance with the Nuisance Code. City Code section 8.04.260 provides, in part, that when a hearing examiner finds that there is a public nuisance, the hearing examiner shall issue a written decision that "require[s] the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the hearing examiner, or in the alternative, within the time designated by the department head." Although the hearing examiner can adopt the department head's timeline for compliance, the City Code vests the hearing examiner with discretion to adopt a different timeline.

In order to conform the appointment process for the panel of hearing examiners to the one that is followed for City boards and commissions, staff recommends that the City Council direct that the Public Employee and Personnel Committee conduct a hearing on each appointee to the panel of hearing examiners established pursuant to Sacramento City Code section 8.04.070 prior to the vote on the appointment by the City Council. To further standardize the appointment process, staff recommends that the City Council direct staff to prepare and bring forward to the Law and Legislation Committee an ordinance that a) makes the panel of hearing examiners subject to Article XV of the City Charter and the City Council and Commission Appointment Procedure Reform Ordinance of 1983; and b) provides objective criteria for the panel of hearing examiners to consider when granting continuances and modifying fines and penalties. These minor revisions to the City Code can be made quickly so that they may be reviewed by the Law and Legislation Committee relatively soon.

Attachment 2

RESOLUTION NO.

Adopted by the Sacramento City Council

REPORT BACK: PANEL HEARING EXAMINERS

BACKGROUND

At its December 18, 2007, meeting, the City Council raised concerns regarding 1) the process for appointing hearing examiners; 2) the ability of hearing examiners to grant continuances in cases pending before them; 3) the number of people appearing before the hearing examiners during calendar year 2007 who were granted 2 or more continuances; and, 4) the ability of hearing examiners to modify fines, timelines, and other staff recommendations in cases pending before them.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Staff shall refer all proposed applicants for the hearing examiner panel, established pursuant to Sacramento City Code section 8.04.070, to the Public Employee and Personnel Committee for review and recommendation prior to the City Council's appointment of new hearing examiners.
- Section 2. Staff is directed to prepare and bring forward to the Law and Legislation Committee an ordinance that a) makes the panel of hearing examiners subject to Article XV of the City Charter and the City Council and Commission Appointment Procedure Reform Ordinance of 1983; and b) provides objective criteria for the panel of hearing examiners to consider when granting continuances and modifying fines and penalties.