



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

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File ID: 2019-00916

June 11, 2019

Consent Item 02

Title: Appointment of Hearing Examiner for Appeals of Cannabis Cultivation Administrative Penalties

Location: Citywide

Recommendation: Adopt a Resolution appointing Edith Awuah as a Non-Advisory Board, Hearing Examiner for Administrative Appeals of Cannabis Cultivation Administrative Penalties for a term of six months at a rate of \$85.00 per hour.

Contact: Leyne Milstein, Assistant City Manager, (916) 808-8491, Office of the City Manager; Wendy Klock-Johnson, Assistant City Clerk (916) 808-7509, Office of the City Clerk

Presenter: None

Attachments:

1-Description/Analysis

2-Resolution

Description/Analysis

Issue Detail: The City Council has established that appeal of administrative penalties imposed for violations of City Code Chapter 8.132, Cultivation of Cannabis, be heard by a hearing examiner. Under City Code section 1.28.010 (D)(4)(c), administrative penalty appeals shall be heard by a hearing examiner appointed by the City Council.

The appeals of fines for illegal cultivation of cannabis have been heard by hearing examiners appointed by the City Council to hear code enforcement violations, typically issued by Community Development Department (CDD) staff. The CDD hearings are generally informal and the focus is to seek compliance with a notice and order regarding housing code and nuisance violations. The CDD hearing examiners are paid \$50 per hour.

Hearings regarding penalties for illegal cultivation of cannabis require a more formal process. The focus of these hearings is usually on the property owner's action or inaction that allowed the cultivation of cannabis by a tenant, who typically does not even live there. As a result, there is a need to appoint a hearing examiner for the appeals of fines for illegal cultivation of cannabis who has experience as practicing attorney with knowledge of the rules of civil procedure in order to manage the hearing process, focus the hearings on relevant issues, evaluate evidence, and issue formal opinions that include applicable findings of fact.

The appellants who have been issued administrative penalties for illegal cultivation of cannabis are usually represented by legal counsel due to both criminal and civil penalties for such conduct. The fine amounts range from \$25,000 to hundreds of thousands of dollars depending on the number of cannabis plants that are seized by the Police Department pursuant to a search warrant. Due to the amount of the fines and the potential lien that may be placed against the property for collection, the decision of the hearing examiner is frequently challenged in court under a writ of mandate. As a result, the appeal hearings for cannabis cultivation need to be conducted by an attorney who is experienced with the legal procedures for administrative hearings and who can issue a formal written decision that may be subject to challenge in court.

The Office of Cannabis Policy and Enforcement is recommending that the City Council appoint attorney Edith Awuah as the hearing examiner for appeals of administrative penalties for violation of Chapter 8.132, Cultivation of Cannabis, for a term of six months at a rate of \$85.00 per hour, plus mileage reimbursement. She has four years' experience serving as a hearing examiner for the City of Modesto, in addition to six years serving as a mediator for the superior court.

During the six-month term, staff will conduct more extensive outreach to find a panel of local attorneys who can serve as hearing examiners in order to ensure that the cannabis appeal hearings, which occur twice a month, can be properly administered once that term has expired.

Once appointed, a hearing examiner cannot be removed during his or her term unless they fail to meet the requirements of a hearing examiner such not properly administering the hearing, failing to issue decisions that are based on the facts disclosed at the hearing, or if they are unable to continue serving due to scheduling conflicts, health conditions, or similar reasons.

Policy Considerations: None.

Economic Impacts: Not applicable.

Environmental Considerations: Not applicable.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Hearing examiners for cannabis cultivation administrative penalty appeals need to have prior legal experience in conducting hearings and issuing opinions based on findings of fact.

Financial Considerations: While the hourly rate for an attorney to hear appeals of administrative penalties is higher than for a layperson, it is important that an experienced hearing examiner be appointed for appeal of penalties issued under Chapter 8.132, Cultivation of Cannabis. The cost will be covered through the appeal fees and the Cannabis Program Multi-Year Operating Project (MYOP), which is partly funded by administrative penalties that cover costs of illegal enforcement operations, should hearing costs exceed the appeal fee of \$250.

Local Business Enterprise (LBE): Not Applicable.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPOINTING EDITH AWUAH AS HEARING EXAMINER FOR APPEALS OF ADMINISTRATIVE PENALTIES IMPOSED FOR VIOLATIONS OF CHAPTER 8.132 OF THE SACRAMENTO CITY CODE, RELATING TO THE CULTIVATION OF CANNABIS

BACKGROUND

- A. Pursuant to section 1.28.010 (D)(4)(c) of the Sacramento City Code, administrative penalty appeals shall be heard by a hearing examiner appointed by the City Council. The hearing examiner may not be a city employee.
- B. The City Council has established that the appeals of administrative penalties imposed for violations of City Code chapter 8.132, Cultivation of Cannabis, be heard by a hearing examiner.
- C. Due to the amount of the fines for the illegal cultivation of cannabis, which can be hundreds of thousands of dollars, and the likelihood that the decision of the hearing examiner will be challenged in court, there is a need to appoint a hearing examiner who has experience as practicing attorney with knowledge of the rules of civil procedure in order to manage the hearing process, focus the hearings on relevant issues, evaluate evidence, and issue formal opinions that include applicable findings of fact.
- D. The Office of Cannabis Policy and Enforcement is recommending that the City Council immediately appoint Edith Awuah as the hearing examiner for appeals of administrative penalties for violations of Chapter 8.132, Cultivation of Cannabis, for a term of six months. Ms. Awuah is a practicing attorney who was admitted to the State Bar of California in 2007 and has an LL.M. degree in Alternative Dispute Resolution. She has four years' experience serving as a hearing examiner for the City of Modesto and six years serving as a mediator for the Tuolumne County Superior Court.
- E. During the hearing examiner's six-month term, staff will conduct more extensive outreach to find a panel of local attorneys who can serve as hearing examiners in order to ensure that the cannabis appeal hearings, which occur twice a month, can be properly administered once that term has expired.

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

- Section 1. The City Council finds and determines that the background statements A through E are true.
- Section 2. The City Council, in accordance with section 1.28.010 (D)(4)(c) of the Sacramento City Code, hereby appoints Edith Awuah as the hearing examiner for appeals of administrative penalties imposed for violations of Chapter 8.132, Cultivation of Cannabis, for a term of six months and at a rate of \$85.00 per hour plus mileage reimbursement.
- Section 3. The hearing examiner cannot be removed during his or her term unless they fail to meet the requirements of a hearing examiner, such as not properly administering the hearing or failing to issue decisions that are based on the facts disclosed at the hearing, or they are unable to continue serving due to scheduling conflicts, health conditions, or similar reasons.