



City Council Report

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Sacramento, CA 95814

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File ID: 2019-01066

July 30, 2019

Consent Item 11

Title: Appointing Edith Awuah as Hearing Examiner for Appeals of Administrative Penalties Imposed for All Cannabis-Related Violations and for Bid Protests Under Chapters 3.56 and 3.60 of the Sacramento City Code

Location: Citywide

Recommendation: Adopt a Resolution expanding the jurisdiction of Edith Awuah to serve as hearing examiner for appeals of administrative penalties imposed for other cannabis-related violations of the Sacramento City Code, and to hear bid protests under Chapter 3.56 (supplies and services) and Chapter 3.60 (public projects) of the Sacramento City Code.

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 administered under City Code Chapter 1.28. Section 1.28.010 (D)(4)(c) provides that administrative penalty appeals shall be heard by a hearing examiner appointed by the City Council.

On June 11, 2019, the City Council appointed Edith Awuah as a non-advisory board hearing examiner for administrative appeal hearings for administrative penalties issued for illegal cannabis cultivation. These appeal hearings are administered by the Office of Cannabis Policy and Enforcement (OCPE). Ms. Awuah was appointed to serve for a term of six months at a rate of \$85 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.

The administrative appeal hearing process handled by OCPE are currently limited to administrative penalties under Chapter 8.132 (cultivation of cannabis). These hearings occur twice a month. Other administrative appeal hearings of violations of other parts of the City Code default to the Community Development Department (CDD) under current City practice. These violations may include cannabis business regulations (Chapter 5.150), cannabis consumption regulations (Chapter 9.08), the Sacramento Building Code (Title 15) and the Planning and Development Code (Title 17). However, in the interest of efficiency, and due to the complexity of the subject matter, the fact that parties in the cases are usually the same or substantially interrelated, and that appellants are often represented by a legal counsel; it is recommended that these appeals also be heard by a hearing examiner who is an attorney and is familiar with issues specific to cannabis.

The attached resolution proposes to expand the jurisdiction of Edith Awuah to also hear administrative appeal hearings related to administrative penalties for cannabis-related violations of other parts of City Code during her six-month term as hearing officer. (Attachment 2).

Staff is currently conducting 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 after Ms. Awuah's term has expired.

In addition, the City Council needs to appoint a hearing examiner to administer bid protest hearings since McGeorge School of Law no longer offers this service. The City issued a Request for Proposals and received only one proposal with an hourly rate that was too high.

Until legal services for bid protest hearings can be secured through a new solicitation process, staff is also requesting that Ms. Awuah be appointed to hear bid protests.

Policy Considerations: None

Economic Impacts: Not applicable

Environmental Considerations: Not applicable

Sustainability: Not applicable

Commission/Committee Action: Not applicable

Rationale for Recommendation: Administrative penalty appeal hearings for cannabis-related violations of the City Code, just like illegal cannabis cultivation, require an administrative examiner that has prior legal experience in conducting hearings and issuing opinions based on findings of fact. Ms. Awuah was recently appointed for this purpose. In the interest of efficiency, expanding her jurisdiction to hear other cannabis-related administrative appeals will promote proper and efficient administration of the appeal hearings. Also, the City needs to have a hearing examiner available to administer bid protest hearings and Ms. Awuah is an attorney with such experience.

Financial Considerations: While the hourly rate for an attorney to hear appeals of administrative penalties at \$85 an hour is higher than the \$50 hourly rate for other code enforcement hearing examiners, it is important that a hearing examiner with legal experience be appointed for appeal of penalties for cannabis-related violations of the City Code as well as for bid protests. The cannabis hearing costs 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. For bid protests, the appeal fee is \$750 and if the City is successful in determining that the protest is without merit, the appellant has to pay the examiner's fee if the total costs of the hearing exceed the appeal fee.

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 ALL CANNABIS-RELATED VIOLATIONS OF THE SACRAMENTO CITY CODE AND FOR BID PROTESTS UNDER CHAPTERS 3.56 AND 3.60 OF THE SACRAMENTO CITY CODE

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. On June 11, 2019, the City Council appointed Edith Awuah as the hearing examiner for appeals of administrative penalties imposed for violations of Chapter 8.132, Cultivation of Cannabis. (Resolution No. 2019-0221.)
- C. The matters in which administrative penalties are imposed for violations of Chapter 8.132 often also include the imposition of administrative penalties for violations of other parts of the Sacramento City Code, including cannabis business regulations (Chapter 5.150), cannabis consumption regulations (Chapter 9.08), the Sacramento City Building Code (Title 15), and the Planning and Development Code (Title 17).
- D. Despite the variety of provisions upon which administrative penalties are imposed in cannabis cultivation cases, the subject matter and the parties in these cases are usually the same or substantially interrelated. Dividing the cases into two or more hearings will result in inefficiencies for all parties.
- E. In light of the various other Sacramento City Code provisions upon which administrative penalties may be imposed in matters relating to cannabis, and the desire to have the appeals of each of them heard by a hearing examiner that is familiar with the issues specific to cannabis, 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, not only violations of Chapter 8.132 (cultivation of cannabis), but all appeals of administrative penalties for cannabis-related violations and any other violations of the Sacramento City Code cited in the same case.

- F. There is also a need to appoint a hearing examiner to hear bid protests under Chapter 3.56 (supplies and services) and Chapter 3.60 (public projects) of the Sacramento City Code.

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 F 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 all cannabis-related violations of the Sacramento City Code (including chapters 5.150 (cannabis businesses), chapter 8.132 (cultivation of cannabis), chapter 9.08 (public consumption of marijuana), and chapter 17.228 (cannabis special use regulations) and for any other violations of the Sacramento City Code cited in the same case.
- Section 3. The City Council hereby appoints Edith Awuah as the hearing examiner for bid protests filed under chapters 3.56 and 3.60 of the Sacramento City Code.
- Section 4. The term, rate, and other conditions of her appointment on June 11, 2019 shall continue as stated in Resolution No. 2019-0221.