

ORDINANCE NO. _____

**AN ORDINANCE CREATING CHAPTER 2.41 OF THE YUBA COUNTY ORDINANCE CODE
ESTABLISHING THE OFFICE OF THE COUNTY HEARING OFFICER**

The following ordinance consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on ____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson of the Board of Supervisors
County of Yuba, State of California

ATTEST: Mary Pasillas
Clerk of the Board of Supervisors

APPROVED AS TO FORM: Joseph Larmour
County Counsel



THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 2.41 of Title II of the Yuba County Ordinance Code is hereby created:

CHAPTER 2.41
OFFICE OF COUNTY HEARING OFFICER

- 2.41.010 OFFICE CREATED.
- 2.41.020 DUTIES OF OFFICE.
- 2.41.030 DEFINITIONS.
- 2.41.040 APPOINTMENT OF HEARING OFFICERS.
- 2.41.050 QUALIFICATIONS OF COUNTY HEARING OFFICER.
- 2.41.060 TERM OF OFFICE.
- 2.41.070 COMPENSATION OF HEARING OFFICER.
- 2.41.080 REMOVAL OF HEARING OFFICER.
- 2.41.090 DISQUALIFICATION OF COUNTY HEARING OFFICER.
- 2.41.100 GENERAL AUTHORITY OF COUNTY HEARING OFFICER.
- 2.41.110 CONDUCT OF HEARINGS.
- 2.41.120 CONDUCT OF WITNESSES.
- 2.41.130 DECISION.
- 2.41.140 RECORD OF THE HEARING.
- 2.41.150 COST OF PREPARATION OF RECORD OF HEARING.
- 2.41.160 RULES OF PROCEDURE.
- 2.41.170 JUDICIAL REVIEW.
- 2.41.180 EFFECT ON EXISTING LAW.
- 2.41.190 STAFF TO THE OFFICE OF THE COUNTY HEARING OFFICER.

2.41.010 OFFICE CREATED.

Pursuant to California Government Code Section 27720 et seq., the Office of the County Hearing Officer is hereby established.

2.41.020 DUTIES OF OFFICE.

The duties of the Office of the County Hearing Officer are to conduct those hearings that are delegated to it by the County Board of Supervisors, by Ordinance or Resolution. The Hearing Officer may also hear any matter, or matters, appealed to the Board of Supervisors under any section of the Yuba County Ordinance Code, or as to any other hearing or appeal matter as to which the Board of Supervisors may appoint a representative. The Hearing Officer's authority is limited by the County code and the County Hearing Officer shall provide no services to the County other than those of a Hearing Officer.

2.41.030 DEFINITIONS.

- A. "Code" or "Ordinance Code" means the Yuba County Ordinance Code.
- B. "County Department" means the county department responsible for the enforcement of the cited violation(s) of the Yuba County Ordinance Code or other County policy or rule subject to appeal before a Hearing Officer.
- C. "County Hearing Officer" or "Hearing Officer" means the County employee charged with the enforcement of the cited violation(s) of the Yuba County Ordinance Code or other county policy and/or rule subject to appeal before a Hearing Officer.
- D. "Hearing" is an administrative adjudicative proceeding presided over by a County Hearing Officer who receives evidence and legal arguments prior to issuing a decision resolving contested issues of law and/or fact.

2.41.040 APPOINTMENT OF HEARING OFFICERS.

The County Administrative Officer shall appoint a County Hearing Officer, who shall satisfy the requirements of this Chapter. Hearing Officers may be independent contractors, or part-time or full-time employees of the County. The County Administrative Officer may appoint a panel of no less than three Hearing Officers using any, or all of the following methods:

- A. The County Administrative Officer may execute an employment agreement with an individual chosen to serve as Hearing Officers on behalf of the county.
- B. The County Administrative Officer may appoint a Hearing Officer on an Ad Hoc basis for one or more matters or cases.
- C. The County Administrative Officer may authorize the hiring of an employee
- D. The County Hearing Officer shall be administered by Office of the County Administrator.
- E. A vacancy in any allocated Hearing Officer position(s) shall be filled in the same manner in which the position that has become vacant was filled, and the person appointed to such vacancy shall serve the remainder of the unexpired term of the person who left office or was removed from office.

2.41.050 QUALIFICATIONS OF COUNTY HEARING OFFICER.

- A. A Hearing Officer shall have the qualifications stated in California Government Code Section 27724. The Hearing Officer must reside in Yuba or Sutter County. The Hearing Officer shall not be qualified if they have served as a legal representative for, or were employed by, Yuba County within the six (6) months immediately preceding their appointment.
- B. A Hearing Officer shall maintain an active license to practice law in the state of California continuously during his or her term of office.
- C. Failure by a Hearing Officer to satisfy the requirements of this Chapter following his or her appointment shall automatically revoke a Hearing Officer's appointment to serve. A Hearing Officer shall immediately notify the County Administrative Officer of his or her failure to satisfy these requirements.

2.41.060 TERM OF OFFICE.

- A. The term of office of each Hearing Officer shall be four years and shall commence on the day of his or her appointment.
 - 1. A Hearing Officer shall continue to serve until his or her successor has been duly appointed and qualified.
 - 2. A Hearing Officer who is in the process of hearing a matter when the Hearing Officer's term expires, however, shall continue to discharge the duties as a Hearing Officer for the matter until the matter is completed. A Hearing Officer may be appointed to successive terms.
- B. An employee appointed as a County Hearing Officer shall not have a term of office, but shall serve as an at-will employee of the Office of the County Administrator.
- C. An attorney appointed for an Ad Hoc matter, or who is under contract for an individual matter shall not have a term of office, but shall serve as an independent contractor.

2.41.070 COMPENSATION OF HEARING OFFICER.

The Hearing Officer shall be compensated pursuant to the governing contract, or if an employee of the County then by a salary established by the Board of Supervisors.

2.41.080 REMOVAL OF HEARING OFFICER.

A Hearing Officer may be removed from the position of Hearing Officer at any time for cause. If the Hearing Officer is disbarred, suspended, or put on involuntary inactive status by the California State Bar or resigns membership in the California State Bar then the Hearing Officer's appointment will be automatically revoked. If a Hearing Officer is removed or their appointment automatically revoked during the pendency of any hearing, then the County Administrative Officer shall direct a replacement Hearing Officer from the panel of Hearing Officers. Alternatively, the Yuba County Board of Supervisors or an Administrative Law Judge through the State of California Office of Administrative Hearings may preside over the hearing.

2.41.090 DISQUALIFICATION OF COUNTY HEARING OFFICER.

A Hearing Officer is subject to disqualification for bias, prejudice, or interest in a proceeding. A Hearing Officer shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification. It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

- A. Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
- B. Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.
- C. Has, as a lawyer or public official, participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

2.41.100 GENERAL AUTHORITY OF COUNTY HEARING OFFICER.

- A. When any provision of the Yuba County Ordinance Code, any Resolution of the Board of Supervisors or any policy of a County Department has been delegated to be heard by the Hearing Officer, the Hearing Officer shall have the authority to conduct a hearing, receive evidence, administer oaths, rule on the admissibility of evidence and upon questions of law, and any other powers or duties authorized by law.
- B. The Hearing Officer's authority on a particular matter may be limited by the applicable Ordinance Code. Quasi-legislative matters referred to the Hearing Officer for decision retain their quasi-legislative nature and nothing in the appeal or decision of such matter shall be subject to County ordinances, rules or state law governing quasi-judicial hearings or appeals.
- C. The Hearing Officer shall render a written decision, including any findings or conclusions of law required for the decision and submit the decision to the clerk to the board supervisors who shall promptly mail a copy to all parties along with a proof of service.
- D. In those instances where a Hearing Officer is presented with a legal question regarding the interpretation of the provisions of the Yuba County Ordinance Code, the Hearing Officer may either:
 1. take evidence bearing upon the issue of such interpretation and make his or her decision regarding the intent of the ordinance; or
 2. make his or her decision regarding the intent of the ordinance; or
 3. request, through the affected Department, an opinion of the Board of Supervisors regarding its interpretation, which Board of Supervisors' opinion shall be incorporated by the Hearing Officer in reaching his or her decision.

2.41.110 CONDUCT OF HEARINGS.

- A. A Hearing Officer shall conduct and preside over hearings pursuant to the procedures contained herein. However, if the Yuba County Ordinance Code referenced in the appeal is more specific, that Code section shall govern.
- B. During the hearing, each party may be represented by counsel or another representative of the party's choice.
- C. Both before and during the hearing, at the request of any party the Hearing Officer may issue subpoenas and subpoenas duces tecum for the attendance of witnesses and the production of documents at the hearing. Compliance with Code of Civil Procedure section 1985 et seq. shall be a condition precedent to the issuance of a subpoena duces tecum. Any amount required to be paid to witnesses appearing pursuant to a subpoena under section 1985 et seq. shall be paid by the party at whose request the witness was subpoenaed.
- D. The scope of the hearing shall be limited to the order, citation, decision, or determination being appealed, the grounds for relief raised in the notice of appeal, and any specific requirements of this Code.
- E. No discovery requests to other parties are allowed, including depositions, requests for production of documents, requests for admission, and all other discovery permitted in civil cases, except as expressly permitted in this Chapter.
- F. The hearing need not be conducted according to technical rules relating to evidence or witnesses, except as provided in this Chapter. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objections in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- G. At the request of any party, or on his or her own accord, the Hearing Officer may take official notice of any fact that may be judicially noticed by the courts of California. The Hearing Officer shall inform the parties of the matters to be noticed and those matters shall be noted in the record. Each party shall be given a reasonable opportunity to refute any request by a party or action by the Hearing Officer on his or her own accord to take official notice.
- H. Except where otherwise provided in this Code, the burden of proof and production of evidence at the hearing shall be with the County. Except where otherwise provided in this Code, the burden of proof (persuasion) shall be by a preponderance of the evidence.
- I. All hearings conducted by a Hearing Officer shall be open to the public. Any interested person shall have the right to speak at the hearing subject to the Hearing Officer's right

- J. to exclude irrelevant and unduly repetitious evidence. Notwithstanding the above, the parties have the right to petition the Hearing Officer to allow, and the Hearing Officer may in his or her discretion allow, submission of evidence outside the presence of the public, if such evidence would not be disclosable under the Public Records Act, Government Code section 6250 et seq.
- K. Other than at the hearing and except for scheduling, administrative purposes, or emergencies that do not deal with substantive matters, there shall be no direct oral communication between the parties and the Hearing Officer on any matter related to the hearing without each party being present in person or by telephone or other means. Any written communication to the Hearing Officer by a party shall be copied to and served on the other party. Parties, as used in this section, shall also be deemed to refer to representatives for the parties. The Hearing Officer shall promptly forward and/or inform the other party or parties if he or she receives a communication which violates this provision.
- L. The failure of the appellant or any interested party to raise an objection either before or during the hearing regarding any defect in notice or procedure provided under this Code, or at law or in equity, shall be deemed a waiver of the defect. For purposes of a waiver of objection in this subsection, defect in procedure shall include a claim that the Hearing Officer should be disqualified under section 2.41.090.
- M. Unless otherwise provided in this Code, if the appellant fails to appear for the hearing at the time and place noticed, then the Hearing Officer shall dismiss the appeal for failure to appear. If the appeal is dismissed, the order, citation, decision, or determination appealed from shall become final and effective on the date of the dismissal. Upon an appellant's request for reconsideration of the dismissal for failure to appear, which must be filed within ten (10) days of the dismissal, and a showing of good cause, the Hearing Officer may set aside the dismissal upon the appellant's failure to appear, and may reschedule the matter for hearing.
- N. The Hearing Officer may inspect any subject premises; provided, that the Hearing Officer:
 - 1. must give reasonable notice to the parties of the date and time of the inspection;
 - 2. must give the parties an opportunity to be present during the inspection;
 - 3. must state on the record any material facts observed and his or her conclusions drawn therefrom; and
 - 4. must allow each party the right to rebut or explain any of the Hearing Officer's observations and conclusions.
- O. The Hearing Officer may request that the parties to the matter submit written briefs or statements of their position prior to or after the conclusion of the hearing. Any such briefs or statements shall be provided to the Hearing Officer and all parties on a schedule determined by the Hearing Officer, with all briefs filed and served simultaneously.
- P. The Hearing Officer may grant postponements or continuances from time to time upon request and for good cause, or upon his or her own motion.

- Q. Any motions by the parties shall be in writing or made orally on the record during the hearing and shall clearly state the action requested and the grounds relied upon.
- R. Nothing in this Chapter is to be construed as preventing the parties from stipulating to lesser intervals than those prescribed herein. For good cause shown and after giving each party an opportunity to be heard, the Hearing Officer may also shorten the times specified in this Chapter.
- S. Unless otherwise provided in the Yuba County Ordinance Code, the Hearing Officer shall follow the order of proceeding described below in each hearing. The Hearing Officer may vary this order only if the Hearing Officer determines, and states on the record, that special circumstances exist that justify the variance:
 - 1. Ensure the Clerk begins the audio or video recording of the hearing and announce the beginning of the proceedings;
 - 2. Identify the hearing;
 - 3. Request that all attendants at the hearing state their names, and their titles or relation to this matter;
 - 4. Explain to attendants how the hearing will proceed and address any necessary notifications required by these procedures;
 - 5. Have the Clerk swear in all prospective witnesses;
 - 6. Hear any preliminary motions or objections;
 - 7. Allow parties to make opening statements;
 - 8. Allow the party with the burden of proof and production of evidence to present its evidence and witnesses;
 - 9. Allow the adverse party to present its evidence and witnesses;
 - 10. Allow the parties to present rebuttal evidence and witnesses;
 - 11. Allow the parties to make closing statements;
 - 12. Explain the process for the issuance of the final written decision and appeals procedures;
 - 13. Direct the parties to file closing briefs on specific issues, if the Hearing Officer deems this necessary; and
 - 14. Close the hearing and request the Clerk to terminate the recording of the hearing.

2.41.120 CONDUCT OF WITNESSES.

If during a proceeding conducted under this Chapter any person disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, thereafter refuses to be examined, engages in misconduct, or obstructs the proceeding, a Hearing Officer shall certify the facts to the Superior Court of the County to initiate proceedings pursuant to Government Code sections 25173 through 25175.

2.41.130 DECISION.

- A. After the Hearing Officer has considered all evidence presented, including any closing briefs required of the parties, and the relevant standard of review, the Hearing Officer shall issue his or her decision on the matter in writing, within thirty (30) days of the date the matter was deemed submitted for decision. The decision shall include:
 1. a statement of the issues,
 2. findings of fact,
 3. a summary of the relevant evidence,
 4. a resolution of the credibility of witnesses where there is conflicting testimony, (v) a determination of the prevailing party and, if applicable to the matter,
 5. a final determination and order affirming, reversing, or modifying the finding, decision, or action that was the subject of the hearing, or referring the matter back to the County Officer or County Department for further action. If the Hearing Officer finds that the County Officer or Department acted in an arbitrary or capricious manner in the underlying matter, the Hearing Officer may include an order that the appeal fee paid by the appellant be refunded.
- B. Reasonable attorney's fees may be awarded if the Ordinance subject to the appeal allows reasonable attorney fees to be recovered, and provided that notice of the County to seek recovery of the County's attorney's fees has been made.
- C. Alternatively, the decision may be issued orally at the conclusion of the hearing, so long as it is accompanied by a written decision within thirty (30) days of the date the matter was deemed submitted for decision. The parties may waive a written decision, provided the Hearing Officer has advised the parties that in the absence of a written decision the matter may not be appealed to court.
- D. The Hearing Officer may file with the County Administrative Officer a written request for one extension of up to thirty (30) days for submission of the written decision, which request shall be granted or denied by the County Administrative Officer in his or her discretion. The Hearing Officer shall promptly abide by the decision of the County Administrative Officer.
- E. The Hearing Officer shall submit the written decision to the Clerk, who shall promptly mail a copy to all parties along with a proof of service.
- F. The written decision shall include a notice that the parties have ninety (90) days to pursue a petition for a writ of administrative mandamus of the decision under Code of Civil Procedure section 1094.6.
- G. Unless otherwise provided in this Code or the Hearing Officer's decision, the decision shall be effective upon issuance, whether at the hearing or upon serving the written decision.
- H. Unless otherwise provided in this Code, the Hearing Officer's decision shall be final for all purposes, shall be a final agency action for purposes of writ review, shall not be subject to reconsideration or rehearing, and shall not be subject to further administrative appeal.

2.41.140 RECORD OF THE HEARING.

The Hearing Officer shall cause an audio recording of the hearing to be made. Any party at his or her own expense may provide for the taking of testimony by a qualified stenographic reporter. A copy of the stenographic record shall be provided to the Hearing Officer at no cost to the County of Yuba.

2.41.150 COST OF PREPARATION OF RECORD OF HEARING.

- A. Except when otherwise prescribed by statute, the actual costs of preparing the record of proceedings shall be borne by the person requesting the record. No written request for a record of proceedings shall be deemed filed with the county unless and until such person has deposited with the county the estimated costs of preparation thereof as determined by the officer responsible for such preparation, with the difference, if any, from actual costs to be refunded at the time of delivery of the record.
- B. Upon payment of the requisite fees to the responsible enforcement agency, that agency shall prepare a duplicate audio recording of the proceedings, a copy of any documentary evidence admitted at the hearing and any pleadings, notice, order, recommended order, final order or other paper relating to the case. The cost of preparing the record may be waived for individuals who meet the qualifications of a fee waiver in the Superior Court of the State of California.

2.41.160 RULES OF PROCEDURE.

The Board of Supervisors by Ordinance or Resolution may adopt additional rules of procedure governing the conduct of hearings presided over by Hearing Officers.

2.41.170 JUDICIAL REVIEW.

An appeal from a final administrative decision rendered by a Hearing Officer shall be to the California Superior Court in accordance with all applicable laws and rules, including the provisions of Code of Civil Procedure section 1094.6.

2.41.180 EFFECT ON EXISTING LAW.

The provisions of this Chapter constitute an alternative to, and do not supersede, any other provision of law, including this Code, specifying that any matter may be heard or determined by a Hearing Officer.

2.41.190 STAFF TO THE OFFICE OF THE COUNTY HEARING OFFICER.

- A. Staff to the Office of the County Hearing Officer are county staff as designated by the Office of the County Administrator.
- B. The duties of staff to the Office of the County Hearing Officer are administrative only, which may include but are not limited to calendaring hearings; coordinating the designation of hearing officers for hearings, including the designation of hearing officer

panels as required by statute or by ordinance or resolution of the board; reserving hearing rooms; maintaining recording equipment and other equipment needed for hearings, and setting up and operating such equipment as needed; administering oaths to witnesses in hearings; maintaining documents necessary for the operation of the office of the county hearing officer; receiving and sending notices and other documents as may be required for proceedings within the duties of the Office of the County Hearing Officer; and other administrative tasks as may be required by statute, by ordinance or resolution of the Yuba County Board of Supervisors, or by internal policies and procedures that are established by the County Administrative Officer and not in conflict with applicable statute, ordinance, or resolution.

- C. Staff to the Hearing Officer shall not take part in, and shall not perform any research or investigation to aid any Hearing Officer in, the decision of any matter before the Office of the County Hearing Officer for hearing.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.