

## REPORT TO THE CITY COUNCIL

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**DATE:** November 21, 2017

**TITLE:** Ordinance Amending Title 4 "Code Enforcement" of the Desert Hot Springs Municipal Code to Clarify the Procedures for the Selection of Administrative Hearing Officers

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### RECOMMENDATION

Introduce for First Reading and read by title only, "An Ordinance Of The City Council Of The City Of Desert Hot Springs, California, 1) Amending Section 4.16.110 ("Procedures For Appeal Of Public Nuisance And Order To Abate"); and 2) Amending Section 4.16.140 ("Abatement Cost Appeals Procedure") Of Chapter 4.16 ("Public Nuisances") Of Title 4 ("Code Enforcement") Of The Desert Hot Springs Municipal Code ("DHSMC") to clarify the procedures for selection of Hearing Officers."

### BACKGROUND

Desert Hot Springs Municipal Code ("DHSMC") Section 4.16.110 provides the roadmap to appeal any notice of public nuisance and order to abate ("Notice and Order"). The contents of this section are critical to ensure not only the due process rights of any recipient of a Notice and Order, but to ensure that any nuisance abatement action initiated by the City of Desert Hot Springs ("City") is defensible and upheld if reviewed by a higher court.

The essential components of Section 4.16.110 include a method of selecting an administrative hearing officer to conduct hearings of appeals of Notices and Orders. Currently, the City must contact the local Desert Bar Association ("DBA") in order to select a hearing officer. The DBA in turn will randomly select three names from a panel of practicing or retired attorneys and judges. The City and appellant each have the ability to remove one name from the list, and the remaining person would become the hearing officer. However, staff has recently contacted the DBA, which confirmed that it no longer retains or provides any panels or pools of potential hearing officers. As such, Section 4.16.110's current—and only—method of selecting a hearing officer needs to be amended.

DHSMC Section 4.16.140 likewise has a similar method of selecting a hearing officer using a DBA panel of practicing or retired attorneys and judges. Section 4.16.140 contains the procedures to conduct appeals of abatement cost reports ("Cost Report"). Community Preservation Officers may prepare Cost Reports to document the time and expenses incurred by the City in the abatement of a public nuisance. Recipients of a Cost Report may file an appeal to challenge the amount listed in the Cost Report. Currently, Section 4.16.140's only method for selecting a hearing officer is unavailable for use.

Given the relative ease of which Notices and Orders and Cost Reports may be appealed, and given the volume of cases handled by the Community Preservation Division each year, it is important that Sections 4.16.110 and 4.16.140 be amended and updated to ensure an efficient and fair system of appeal is available.

### DISCUSSION

The proposed ordinance revises Section 4.16.110 to allow the City Manager or designee to select the administrative hearing officer. The hearing officer must be an impartial third party with no financial interest in the case or outcome. This method is much quicker and simpler to implement, as the City Manager need not rely on the DBA nor negotiate with the appellant over

a list of candidates. Further, the City would ensure at least one degree of separation between the hearing officer and the appellant. Some cities allow their city managers to act as the hearing officer, but this may/can introduce potential conflicts if the city manager is actively involved in public nuisance cases. Instead, the City would ensure a hearing officer that is disconnected to either party would hear all appeals of Notices and Orders. The appellant's due process rights are therefore protected, and any administrative decision in the City's favor is likely to be upheld if appealed to the superior court.

Other revisions to Section 4.16.110 in the proposed ordinance includes specifying that the hearing officer is not limited by the technical rules of evidence. The introduction of evidence in court has many legal prerequisites, including hearsay, authentication, and personal knowledge. In general, administrative appeals are informal and evidentiary barriers are relaxed to allow a full and fair discussion of the case. This revision makes it clear the hearing officer will not be burdened by technical evidentiary standards.

The remaining revisions to Section 4.16.110 include deadlines for preparing a written decision following the conclusion of administrative hearing, the method of service of the decision, and award of attorney's fees to the prevailing party.

The proposed ordinance makes similar revisions to Section 4.16.140. For appeals of Cost Reports, the City Manager will appoint an impartial hearing officer. Other changes include the hearing officer will not be limited by the technical rules of evidence, a deadline will be imposed for a written decision, specifications for service of the written decision, and award of attorney's fees to the prevailing party. In short, these changes are consistent with the revisions to Section 4.16.110.

By enacting the proposed ordinance, the City will ensure a timely and fair appellate process for Notices and Orders and Cost Reports.

#### **FISCAL IMPACT**

None.

#### **EXHIBITS**

1) Ordinance