

REPORT TO THE CITY COUNCIL



DATE: April 3, 2018

TITLE: An Ordinance Amending the Municipal Code to Clarify the Procedures for the Selection of Hearing Officers

Prepared by: Jennifer Mizrahi, City Attorney

RECOMMENDATION

Introduce for First Reading and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 4.36 ("Permit and License Suspension, Modification, and Revocation Procedures") of Title 4 ("Code Enforcement") of the Desert Hot Springs Municipal Code ("DHSMC") to update the procedures for selection of Hearing Officers."

BACKGROUND

Desert Hot Springs Municipal Code ("DHSMC") Chapter 4.36 provides general procedures to suspend, modify, or revoke licenses and permits. Chapter 4.36 applies when no other code or statute specifically applies. As a general provision applicable to any license and permit, the contents of Chapter 4.36 are critical to protect the due process rights of license and permit holders.

Prior to taking any final action on a license or permit, the City must issue a Notice of Action Recommendation to the license or permit holder, specifying the City's proposed action and supporting reasons. Subsequently, the Administrative Hearing Officer must cause the issuance of a Notice of Hearing informing the license or permit holder of the date and time for the administrative proceeding. The Hearing Officer then considers the merits of the Notice of Action Recommendation, along with any evidence provided by the license or permit holder, and then issues a written decision.

Currently, Chapter 4.36's method of selecting an administrative hearing officer requires the City to 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 license or permit holder 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, Chapter 4.36's current—and only—method of selecting a hearing officer needs to be amended.

Given that license and permit holders may have highly inclined to challenge any threatened suspension, modification, or revocation, 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 Chapter 4.36 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 conduct the hearing. The license or permit holder'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 Chapter 4.36 in the proposed ordinance includes specifying that the hearing officer is not limited by the technical rules of evidence. 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 Chapter 4.36 include minor changes to words and phrases, for consistency and the award of attorney's fees to the prevailing party.

By enacting the proposed ordinance, the City will ensure a timely and fair administrative process for suspension, modification, and revocation of licenses and permits.

FISCAL IMPACT

None.

EXHIBIT

1) Ordinance