



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 10/8/2019

To: Board of Supervisors

Department or Agency Name(s): County Administrator and County Counsel

Staff Name and Phone Number: Michelle Arellano 707-565-3776

Vote Requirement: Majority

Supervisorial District(s): All

Title:

Appointment of Solid Waste Independent Hearing Officer

Recommended Action:

- A) Appoint Summer Nastich as Solid Waste Independent Hearing Officer to hear local appeals of the Local Enforcement Agency for solid waste permitting and enforcement issues for a two year term ending October 22, 2021.
- B) Adopt Solid Waste Local Enforcement Agency Hearing Procedures
- C) Update the "Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings."

Executive Summary:

The Department of Health Services, Environmental Health and Safety Section is designated by California Department of Resources Recycling and Recovery (CalRecycle) as the Solid Waste Local Enforcement Agency (LEA) for Sonoma County. The LEA enforces California state solid waste laws and regulations pertaining to permitting and enforcement at solid waste facilities. The California Public Resource Code and California Code of Regulations require the LEA to have an independent hearing panel or a hearing officer to consider appeals and hearings related to solid waste regulation and enforcement actions. (Public Resource Code § 44308; California Code of Regulations Title 14, § 18060).

This item recommends the appointment of Summer Nastich to serve as the Solid Waste Independent Hearing Officer for a two year term, adopt procedures to conduct LEA appeal hearing proceedings, and approve amendments to the "Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings."

Discussion:

The Local Enforcement Agency (LEA) regulates and inspects all permitted solid waste facilities in its jurisdiction as well as closed landfills to ensure solid waste facilities are in compliance with State solid waste laws. The hearing officer or hearing panel acts as the local appeals body for solid waste permitting and enforcement issues, such as denial, suspension, or revocation of a permit, challenges to recommended permit conditions, enforcement actions against unpermitted facilities and/or other enforcement actions, as well as the LEA's

Agenda Date: 10/8/2019

failure to act. The hearing officer or hearing panel holds hearings upon request made by the person subject to the action or by a person alleging that the Local Enforcement Agency failed to act, and decides whether to grant or deny relief. Decisions may then be appealed to CalRecycle.

Historically, the Sonoma County Board of Supervisors (“Board”) has chosen the option of an independent hearing panel and has made appropriate appointments and reappointments to this panel since 1992. On November 11, 2018, the Board took action to change its appeal process from a hearing panel model to a hearing officer model and adopted procedures for appointing hearing officers and qualifications that a hearing officer is required to meet.

Solid Waste Hearing Officer Selection Process

A Request for Qualifications was issued on August 5, 2019 through August 30, 2019. Only one Statement of Qualifications was received. A committee comprised of County Counsel and County Administrator’s Office staff evaluated and ranked the candidate consistent with the requirements of the “Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings.” Qualification criteria requires that the candidate be licensed as a member of the State Bar of California for a minimum of eight years, have appropriate legal, administrative or technical abilities in areas related to solid waste management and/or administrative law, and demonstrate a judicial demeanor consistent with the impartial conduct of any proceedings.

Ms. Nastich meets the appropriate qualifications for a solid waste hearing officer which include a license to practice law in the State of California, minimum of 8 years practicing law, and subject matter expertise in administrative law and familiarity with solid waste issues. She does not have a conflict of interest that would prevent her from serving as a hearing officer. As a solid waste hearing officer she will be independent of the “operating unit” as defined in Title 14, section 18011(a)(17) of the California Code of Regulations.

Proposed Amendments to “Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings”

The “Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings” state that in the event there are no qualified applicants, or if an appointed qualified hearing officer is unavailable for a requested hearing, the County may retain services of an administrative law judge contracted through the State Office of Administrative Hearings or a qualified staff person of another California County or local agency to serve as a hearing officer. The proposed amendments would provide the County coequal selection of an appointed hearing officer, administrative law judge, or qualified staff from another California County. This would afford County staff with flexibility necessary to secure hearing officer services to meet stringent deadlines associated with statutory requirements for expedited hearings.

Agenda Date: 10/8/2019

Staff is also requesting that the Board establish procedural rules for hearings conducted before the Hearing Officer in accordance with PRC Section 44310 and adopt the Solid Waste Local Enforcement Agency Hearing Procedures.

Should the Board approve the appointment of Ms. Nastich as Solid Waste Hearing Officer, the County Administrator will execute a contract for a 2-year term with a not to exceed amount of \$10,000 per assignment.

Prior Board Actions:

11/13/18 The Board approved dissolution of the Solid Waste Independent Hearing Panel and adopted procedures governing appointment of Hearing Officer in place of Hearing Panel.

FISCAL SUMMARY

| Expenditures | FY 19-20 Adopted | FY20-21 Projected | FY 21-22 Projected |
|------------------------------------|---------------------|----------------------|-----------------------|
| Budgeted Expenses | \$10,000 | | |
| Additional Appropriation Requested | | | |
| Total Expenditures | \$10,000 | | |
| Funding Sources | | | |
| General Fund/WA GF | | | |
| State/Federal | | | |
| Fees/Other | \$10,000 | | |
| Use of Fund Balance | | | |
| Contingencies | | | |
| Total Sources | \$10,000 | | |

Narrative Explanation of Fiscal Impacts:

In accordance with the Board "Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings" Hearing officers shall be paid at the hourly rate established by the California State Office of Administrative Hearings for administrative law judges. The current rate is \$295 per hour. The maximum fee amount per assignment is \$10,000.

| Staffing Impacts: | | | |
|---|------------------------------------|-----------------------|-----------------------|
| Position Title (Payroll Classification) | Monthly Salary Range (A-I Step) | Additions (Number) | Deletions (Number) |
| | | | |
| | | | |
| | | | |

Agenda Date: 10/8/2019

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

1. Solid Waste Local Enforcement Agency Hearing Procedures.
2. Proposed amendments to “Procedures & Qualifications for Appointment of Hearing Officers for Hearings on Matters Related to Local Enforcement Agency Proceedings”

Related Items “On File” with the Clerk of the Board: