



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
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JANICE HAHN
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Correspondence Received

The following individuals submitted comments on agenda item:				
Agenda #	Relate To	Position	Name	Comments
75.		Other	Lena Silver	
		Item Total	1	
Grand Total			1	



June 21, 2024

Supervisor Holly Mitchell
500 West Temple Street
Suite #866
Los Angeles, CA 90012

Re: Los Angeles County’s Proposed Hearing Officer Ordinance

Dear Supervisor Mitchell,

Thank you for the invitation to comment on the proposed ordinance establishing the Office of the County Hearing Officer. We write to you on behalf of a coalition of legal service organizations in Los Angeles County to provide feedback on the motion to adopt the proposed ordinance adding section 2.14.030 to the Los Angeles County Code creating the Office of the County Hearing Officer.

Our non-profit legal organizations support the stated goals of the motion--to ensure independence and the dignity of the hearing forum to review decisions, administrative actions or fines/citations issued by County officials. We are concerned, however, with the short timeframe in which to comment on this impactful and far-reaching ordinance, and the lack of stakeholder involvement leading up to its vote for adoption.

While we understand that County Counsel will promulgate more detailed regulations and procedures following the passage of this ordinance, advocates insist that the ordinance itself should include more detail on several important aspects of the administrative process, some of which include a commitment to language access, standards for hearing notices, standard of review, language about the recording of hearing and preparation of transcripts, incorporation of and improvement to Chapter 1.25, language about review of hearing decisions and appeal procedures, timeframes for resolving cases, and burden of proof. Without a more specificity, advocates are concerned that major elements critical to due process will be overlooked.

Finally, while a primary goal of creating this office is to enhance impartiality, housing it within County Counsel creates new impartiality concerns, especially since County Counsel will defend any appeals in state court brought by claimants who disagree with a hearing officer’s decision. The County should

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EL MONTE OFFICE
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Pacoima, CA 91331

WELLNESS CENTER
Historic General Hospital
1200 N. State St., #1008
Los Angeles, CA 90033

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consider placing this office within a different agency or section of the County so it can be more independent.

About the populations we serve

Our organizations represent hundreds of claimants who navigate hearing procedures in the County of Los Angeles. Our clients include sidewalk vendors in unincorporated Los Angeles County seeking health and vending permits, renters facing habitability issues or evictions, business professionals seeking license renewals, workers seeking to enforce wage claims, individuals seeking General Relief and other public benefits, and many more. These clients are all low-income Angelenos, many of them do not speak English proficiently, work full time, and are caregivers to children and relatives. The current hearing procedures in Los Angeles County pose barriers to our clients in accessing their rights due to lack of realistic notice requirements, lack of language access, and lack of legal representation. We hope the County will consider these clients in the drafting of this ordinance and in the implementation of the regulations.

Concern about Feedback Timing

We do not believe in moving forward with the second reading and adoption of this Ordinance without incorporating meaningful input from the affected communities with the most relevant lived experience. The quick deadline to review and comment on this Ordinance does not allow for sufficient time to gather robust feedback from the affected communities on how the Ordinance will affect them, and their concerns about the existing rules and the proposed changes. Also, this draft Ordinance does not have sufficient detail to properly inform the community regarding the process and parameters of the Office of the County Hearing Officer. Since we do not know enough about the proposed hearing process, any feedback we give now is superficial at best.

We request that the reading of this ordinance be delayed to allow for an opportunity for additional stakeholders to provide feedback, and for that feedback to be incorporated into the proposed Ordinance.

Concerns about the Ordinance

At this time, without the opportunity for deeper engagement, our organizations have a few crucial questions about the ordinance, as well as recommendations for changes, which we hope County Counsel will consider while drafting:

Section 3: Qualifications, Appointment, and Assignment:

Training and Minimum Standards: The ordinance does not address standards for training or onboarding of hearing officers. How will new Hearing Officers be selected and appropriately trained to ensure they have the qualifications and knowledge for the job?

- Hearing officers will likely be adjudicating cases from many different areas of the law, which they will need to learn. How will the County be training officers on new areas of the law?
- County Hearing Officers will also be hearing cases from the diverse community of Angelenos, who come from many different cultural backgrounds. How will new officers be trained on cultural competency and implicit bias?

- CDSS ALJs must pass a special test before being hired. Will the County consider such a process?

Section 4: Authority and Duties:

Duties: The list outlining the authority and duties of the officer is too brief, stating: “Hearing Officer shall have the authority to conduct a Hearing, issue subpoenas, receive evidence, administer oaths, rule on the admissibility of evidence and upon questions of law, issue decisions or recommendations, and prepare records of proceedings.” This does not address, for example, the questioning of witnesses, issuance of Subpoena duces tecum, hearing of motions, requests for postponement, etc.

Standards for the quality of written decisions: The law should lay out minimum standards for sufficiently detailed hearing decisions.

Timeframe to issue a decision: The ordinance says that a decision shall be rendered in the time prescribed by state law or county code, but there likely will be instance where a decision timeframe is not prescribed. This can create inequity in the adjudication of different types of cases, and harm people who, for example, have suspended licenses or other impacts on their economic well-being while waiting for a decision. Advocates recommend adopting the timeframes set by CDSS for CalFresh hearings, which are that a hearing is held and a decision is rendered within 60 days of the request.

Record and transcript: The current ordinance is vague as to the standard for producing a record and transcript. The ordinance should state clearly that hearings are to be recorded and the county has an obligation to create a transcript of the proceedings for appeal purposes.

Areas of the law/Subject Matter Jurisdiction: The ordinance should clarify which specific types of cases the Hearing Officers can hear. The current language states the office can hear any case when a state law or LA County Code provides that a hearing be held or a that findings of fact or conclusions of law be made. However, hearing forums already exist for many hearings under state law within CDSS, CSD, DHCS, DOR, EDD, etc. Consider Santa Clara County’s language: “When a State law, local ordinance, or local rule provides that a hearing be held or that findings of fact or conclusions of law be made by the Board of Supervisors or by any County board, agency, commission, or committee, and the **State law, local ordinance, or local rule does not prohibit assignment of this function to another body**, the County Executive may assign the Office to select a Hearing Officer to conduct such hearings.”¹

- Will General Relief hearing be covered?
- Will County personnel hearings be covered?

Section 5: Conflicts of Interest:

Who will be the hearing officers? The ordinance as written does not clarify whether Hearing Officers will be hired only to serve as Hearing Officers or if County Counsel attorneys will rotate through the duties of serving as hearing officers. If the latter, this would create a serious

¹ Santa Clara County Code of Ordinances Sec. A38-4. Hearing Officer’s Authority, available at https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITAGEAD_DIVA38_OFCOHEOF_SA38-5PECH

conflict of interest, even with the amended language that an officer cannot hear a case if they have been involved with that issue in the preceding 12 months. While other agencies certainly have a hearing office embedded within them, the hearing division is separate (for example, at CDSS and DHCS, the hearing division is a separate division that does not overlap with the AG's office or other CDSS officials; for EDD, CUIAB is an entirely separate entity). See our initial recommendation that this office be moved to a different section of the County.

- How will potential internal conflicts of interest be addressed?
- Will County Counsel attorneys be rotated through as hearing officers or will new positions be opened up where officers will only serve for these hearings?

Peremptory challenges: The current ordinance does not contain any language related to peremptory challenges to judges, and it should. Please see language from Santa Clara County's ordinance establishing an office of the hearing officer providing for peremptory challenges.²

Section 6: No Additional Compensation:

Pay structure: How will Hearing Officers be paid -- on a salary or ad-hoc basis? The section says they are employees of the county but does not explain the pay structure.

- Please note that payment on an ad-hoc basis, where payment depends on the number of matters they hear, may create an illegal pecuniary interest violating claimant's due process rights because officers would not be impartial. See *Haas v. Cnty. of San Bernardino*, 45 P.3d 280 (Cal. 2002).

Section 7: Rules and Procedures for Administration:

Timing of decisions: How quickly will the county commit to hearing a case and achieving a decision? For CDSS hearings, a CalFresh hearing must be heard and decided within 60 days of the hearing request, and a hybrid of CalFresh and cash aid hearing must be heard and decided within 90 days. Advocates recommend similar timeframes be built into this ordinance.

Notice Requirements and Access to Records: The ordinance should put forth minimum standards for notice that give rise to the subject matter before the officer, so as to ensure the claimant is fully informed of the issues covered by the hearing and can prepare sufficiently for it. Further, the ordinance should clearly state that a claimant has a right to receive a copy of their file or other records that form the basis of the adverse county action they are appealing.

Notice of Hearing: The ordinance should lay out basic standards for issuing notice of hearing, including providing the claimant at least 14 days prior notice of the hearing, a process for requesting postponement, and a process for rectifying a failure to appear by providing a showing of good cause. San Bernadino's ordinance codifies 15 days' notice prior to a hearing.³

Section 8: Rules and Procedures for Hearings: the current ordinance is extremely vague in terms of hearing procedures. While advocates understand County Counsel will produce further policy and regulations, the ordinance should contain minimum standards to ensure fair hearings. Additional Provisions it should include are:

² Santa Clara County Code of Ordinances at Sec. A38-5. – Peremptory Challenges
https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITAGEAD_DIVA38_OFCOHEOF_SA38-5PECH

³ See San Bernardino County Ordinance § 12.2712 **Form: Notice to Show Cause at**
https://codelibrary.amlegal.com/codes/sanbernardino/latest/sanberncty_ca/0-0-0-148271

Burden of Proof and Evidentiary Burden: The current ordinance does not put forth a burden of proof or evidentiary burden, and it should. See examples:

- The Los Angeles Municipal Code has the following language we would recommend: “The City bears the burden of proof at an administrative hearing to establish the existence of the Administrative Violation specified on the citation. The Administrative Hearing Officer shall use preponderance of the evidence as the standard of proof in deciding the issues.”⁴
- Santa Clara’s ordinance states: “Unless otherwise specified in this Code, the Hearing Officer’s decision shall be **based on a preponderance of the evidence.**”⁵

Evidentiary standard: While it is true that the evidentiary standard is more informal in administrative proceedings, the ordinance should have a higher standard than what is currently written. Advocates recommend language like that in the CDSS regulations at 22-050:⁶

Except as provided below, evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

.21 The Administrative Law Judge shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

.22 The Administrative Law Judge shall be permitted to exclude evidence which is irrelevant, cumulative or unduly repetitious.

.23 The Administrative Law Judge shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law.

.3 Although evidence may be admissible under Section 22-050.2, the Administrative Law Judge shall consider the nature of the evidence in assessing its probative value.

Appeals Procedures and Judicial Review: The ordinance as drafted does not contain any language regarding appeals of hearing decisions. This must be amended.

- At a minimum, the ordinance should contain language similar to Santa Clara’s: “An appeal from the final administrative decision of the Office shall be to the Superior Court of California, County of Santa Clara, in accordance with all applicable laws and rules, including the provisions of California Code of Civil Procedure Section 1094.6 and/or Government Code Section 53069.4.”⁷
- Timeframe for appeal: The default deadline to file a state court writ to appeal a local agency-decision is 90 days, which is a very short amount of time that not only raises due process and notice issues, but could also be a driver of writ litigation. For welfare rights, the State provides a 1-year deadline (per Welfare & Institutions Code Section 10962)

⁴ LAMC. SEC. 11.2.09. ADMINISTRATIVE HEARING

https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-225847

⁵ See Santa Clara County Code of Ordinances Sec. A38-4 (b). Hearing Officer’s Authority, available at

https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITAGEAD_DIVA38_OFCOHEOF_SA38-5PECH

⁶ See CDSS MPP 22-000 at <https://www.cdss.ca.gov/ord/entres/getinfo/pdf/4cfcman.pdf>

⁷ Santa Clara County Code of Ordinances Sec. A38-8, available at

https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITAGEAD_DIVA38_OFCOHEOF_SA38-5PECH

and utilizes a Rehearing unit, which serves both to provide claimants with a speedy mechanism to escalate hearing problems and to limit CDSS's exposure to litigation (and associated attorney fee bills) caused by clearly erroneous hearing officer decision-making.

Consider adding rehearing procedures: Social Security and CDSS/DHCS- administered benefits have hearing procedures that allow another level of review of hearing decisions before forcing pro per claimants into state or federal court. LA County should consider adding rehearing procedures. San Bernardino has the following language for Reconsideration:⁸

§ 12.2728 Reconsideration.

Within 15 days following service of the agency's decision, a party may file with the agency a petition for reconsideration on one or more of the following grounds:

1. That the decision is contrary to law;
2. That the decision is contrary to the findings of fact;
3. That the decision is contrary to the conclusions of law;
4. That the findings of fact or conclusions of law are not supported by the evidence;
5. That the party has discovered evidence which with due diligence he or she could not have discovered before the time of the hearing.

The agency may order reconsideration on its own motion within 15 days after service of its decision.

The agency's authority to act upon a petition for reconsideration shall terminate at the expiration of 30 days after the service of its decision. If no action has been taken regarding a petition within such 30- day period, the petition shall be deemed denied.

(Ord. 1709, passed - -1972)

Record and transcript: The current ordinance is vague as to the standard for producing a record and transcript. The ordinance should state clearly that hearings are to be recorded and the county has an obligation to create a transcript of the proceedings for appeal purposes.

Section 9 Hearing Officer Services for Other Public Agencies:

Overburdening the Office: California already has a State Office of Administrative Hearings with which the County and cities can contract.⁹ To the extent the County Office is overburdened with existing county hearings, it should not make itself available to municipalities.

Other: The following are considerations for the roll out of the office:

Access to Representation: It is very difficult for unrepresented claimants to understand the law. How will these claimants be supported so that they can exercise their rights and understand their responsibilities under the law? Are claimants able to have a non-legal advocate present

⁸ See San Bernardino County Ordinance **§ 12.2712 Form: Notice to Show Cause at** https://codelibrary.amlegal.com/codes/sanbernardino/latest/sanberncty_ca/0-0-0-148271

⁹ See Office of Administrative Hearings website at <https://www.dgs.ca.gov/OAH>

and will there be a process for appointment of a representative? Will the County consider additional funding for legal aid to assist claimants in their hearings?

Language Access: Will County Counsel engage in comprehensive planning and staffing to ensure for meaningful language access and effective communication for all individuals throughout each step of the hearing process, including having effective systems for capturing language spoken, sign, and written language preferences; transmitting professionally translated notices and vital information to claimants; notifying claimants in-language regarding their language rights; providing qualified interpreters for hearings and other interactions; and otherwise align with the [Countywide Language Access Policy](#) adopted by the Board of Supervisors on April 23, 2024?

Rules and Regulations: County Counsel should adopt regulations that meet the level of specificity laid out in the CDSS MPPs at 22-000, governing hearing procedures.¹⁰

Suggestions to Reform Existing Hearing Procedures Generally and to Clarify the Interaction between the hearing procedures proscribed under Chapter 1.25 and this Proposed ordinance

While it is unclear under the current proposed ordinance the level to which the county intends to incorporate previous administrative hearing procedure under Chapter 1.25. In other counties that have implemented an office of hearing officers, they have incorporated into their ordinance more detailed hearing procedures, including what is required in a notice, appeal timeframes, good cause waivers, etc. As drafted sections 7 and 8 of the proposed ordinance allows for the modernizing of existing hearing processes. Considering all hearing will be consolidated under one office, it would be best to consolidate and enhance timeframes and hearing procedures to ensure a universally high level of due process. We welcome this opportunity and want to highlight suggestions that can increase access to justice related to administrative hearings that improve upon the current Chapter 1.25 rules. Advocates also recommend that the proposed ordinance plainly state how it interacts with Chapter 1.25, and explicitly modernize aspects of 1.25 that currently harm vulnerable Los Angelinos.

Under current LA County Ordinance Sec 1.25.080 an administrative hearing request must be made within 10 calendar days following service of the notice of administrative fine. The request must be made in writing and include the basis the individual is contesting the fine with any related evidence the individual wants the hearing officer to consider.

As many of our clients lack stable addresses, reliable access to technology, and may be dealing with language barriers, this timeline can prove to be an insurmountable barrier to requesting a hearing. We suggest amending this timeframe to 90 calendar days, in line with the appeal procedures for CDSS and DHCS public benefits programs, to afford a more realistic opportunity for individuals to navigate the appeals process and gather the necessary evidence for the hearing officer to properly adjudicate the hearing.

Section 1.25.080(c) also allows individuals who qualify for a hardship waiver to forego the requirement to put down a deposit of the administrative fine at issue to request a hearing. This subsection requires individuals to submit a sworn affidavit with supporting documents demonstrating the individual's inability to pay the deposit amount. While we believe hardship waivers are an important mechanism to allow low-income individuals to access these hearings, we suggest incorporating some presumptions that clarify qualification. An example suggestion would be anyone

¹⁰ See CDSS MPP 22-000 at <https://www.cdss.ca.gov/ord/entres/getinfo/pdf/4cfcman.pdf>

whose income is 125% below the federal poverty level, or whose sole source of income is public benefits is presumed to qualify for the waiver. This clarification would help individuals applying for the waiver to know exactly what documents are needed to demonstrate their inability to pay the deposit.

Under the current framework if a hearing officer upholds the administrative fine, an individual who was granted a hardship waiver is given 20 calendar days to pay the fine (see Sec. 1.25.090(f)). As previously discussed, because many of our clients receive little to no income (some only receiving \$221 per month in General Relief) this timeframe would force them to decide between paying the fine and meeting their basic needs. We suggest both expanding this timeframe to 90 calendar days and also incorporating the option of being enrolled into a low-income payment plan, to allow individuals to comply with making payments towards the fine without sacrificing basic necessities like housing, food, or transportation. We suggest that the same documentation to qualify for a hardship waiver would be sufficient to demonstrate eligibility for a low-income payment plan.

In terms of language access, all notices, explanations of procedures, and vital information need to be in the preferred languages of claimants. County Counsel should proactively translate, by qualified human translators, all vital information and taglines into at least the top 30 language groups with limited English proficiency in Los Angeles County. Sight translations and in-language explanations of notices must also be provided, particularly for individuals who are unable to access written content in any language. County Counsel should implement principles of good cause to allow for tolling of deadlines and extended timelines to account for delays caused by the untimely provision of language services. In addition to these suggestions, we would also like to offer opportunities to collaborate with County Counsel to offer legal aid assistance to low-income LA county residents in their administrative hearings. Reflecting a commitment to access to justice offering representation or at minimum counsel and advice from legal aid attorneys would help to ensure that individuals are fully advised of their rights regarding these administrative hearings and can also ensure that these issues are being resolved with the maximum amount of input from the individuals most affected.

Conclusion

Thank you again for inviting us to comment on this important proposed ordinance. We hope that the vote will be delayed and that your office and other supervisors will engage in meaningful assessment of further protections that can be built into the ordinance to ensure meaningful process. Please let us know if you have any questions or would like to discuss further.

Sincerely,

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