ORDINANCE NO. 3606

AN ORDINANCE AMENDING CHAPTER 31 (“ADMINISTRATIVE HEARING PROCEDURES AND OFFICE OF COUNTY HEARING OFFICER”) OF PART I (“GOVERNMENT AND ADMINISTRATION”) OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO THE COUNTY HEARING OFFICER POSITION.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Section 1-31-1000 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1000. ADMINISTRATIVE HEARING PROCEDURES:

As to any matter that the Board of Supervisors by ordinance or resolution makes subject to the provisions of this Chapter, the administrative appeal shall be controlled by the procedures set forth in this Chapter. The provisions of this Chapter shall be applicable only where there is a specific reference to this Chapter by resolution, or ordinance, directing that the provisions of this Chapter shall control.

Section 2. Section 1-31-1010 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1010. DEFINITIONS:

For the purposes of this Chapter, the following words and phrases shall have the following meanings:

(a) “Clerk” or “Clerk to the Board of Supervisors” means the Chief Clerk of the Board of Supervisors or his or her designee.
(b) "County Department" means the Department responsible for the enforcement of the cited violation(s) of this Code or other County policy or rule subject to appeal before a Hearing Officer.

(c) "County Officer" means the County Officer or employee charged with the enforcement of the cited violation(s) of this Code or other County policy and/or rule subject to appeal before a Hearing Officer.

(d) "Hearing" means an administrative adjudicative proceeding presided over by a Hearing Officer who receives evidence and legal arguments prior to issuing a decision resolving contested issues of law and/or fact.

(e) "Hearing Officer" means a qualified person appointed to be a County Hearing Officer pursuant to this Chapter.

(f) "Party" or "parties" means the County Department or County Officer, on behalf of the County, and the appellant(s) and/or the individual(s) against whom the County is proceeding.

Section 3. Section 1-31-1020 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1020. FORM AND CONTENTS OF APPEAL FORM:

All appeals subject to this Chapter must be filed using forms furnished by the Clerk to the Board of Supervisors and available in person from the Clerk’s office and on the Clerk’s webpage. A separate appeal form must be filed for each matter being appealed. Any required attachments must be included with the appeal form. At the time of filing the appeal, the appellant must pay a fee in an amount established from time to time by resolution of the Board of Supervisors.

Section 4. Section 1-31-1070 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1070. AUTHORIZATION AND DIRECTION TO CLERK:

The Clerk is authorized and directed to take all actions and to do all things necessary to comply with and carry into effect all provisions of this Chapter as well as all other provisions of this Code related to administrative appeals.
Section 5. Section 1-31-1090 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1090. 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 Board of Supervisors by ordinance or resolution in accordance with the requirements of Government Code section 27720 et seq. The Board of Supervisors may also by resolution assign to the County Hearing Officer any matter or matters appealed to the Board of Supervisors under Section 165 of this Ordinance Code, or any other hearing or appeal matter or matters as to which the Board of Supervisors may appoint a representative,

Section 6. Section 1-31-1100 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1100. APPOINTMENT OF COUNTY HEARING OFFICERS:

(a) The Board of Supervisors may appoint a County Hearing Officer using any or all of the following methods:

(1) The Board may authorize the hiring of an employee.

(2) The Board may appoint a panel of not less than five attorneys-at-law, who shall serve a term of years as specified in this Chapter.

(3) The Board may directly contract with an attorney on an ad hoc basis for one or more matters or cases.

(4) The Board may contract with the Office of Administrative Hearings of the State of California, pursuant to Government Code section 27727, for the services of an administrative law judge.

(b) If a panel has been appointed, a vacancy in any one of the Hearing Officer panel positions 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.

(c) A Hearing Officer appointed to the panel of Hearing Officers, or an attorney hired directly, shall be an independent contractor. To avoid conflicts of interest, including the appearance of conflicts, a Hearing Officer shall provide no services to the County other than those of a Hearing Officer.
(d) The County Administrative Officer is authorized to execute service agreements with individuals appointed to the panel of Hearing Officers, or hired directly for an individual matter, subject to approval of the form of the contract by County Counsel. Such Hearing Officers shall be compensated for their services on an hourly or flat rate basis, and reimbursed for their actual and necessary expenses, as the County and the Hearing Officer may agree.

(e) The County Administrative Officer is also authorized to execute agreements with the Office of Administrative Hearings as necessary to carry out this Chapter.

Section 7. Section 1-31-1110 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1110. QUALIFICATIONS OF COUNTY HEARING OFFICERS:

(a) A Hearing Officer shall have the qualifications stated in Government Code section 27724.

(b) A Hearing Officer shall maintain an active license to practice law in the State of California. If the Hearing Officer is appointed through the panel method, this requirement shall apply only during the Hearing Officer’s term of office.

(c) Failure by a Hearing Officer to satisfy the requirements of subsection (b) of this section following his or her appointment shall automatically revoke a Hearing Officer’s appointment to serve. A Hearing Officer shall immediately notify the Clerk of his or her failure to satisfy the requirements of subsection (b) of this section.

Section 8. Section 1-31-1120 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1120. TERM OF OFFICE:

(a) The term of office of each Hearing Officer appointed through the panel appointment method shall be four years and shall commence on the day of his or her appointment; provided, that each such Hearing Officer shall continue to serve until his or her successor has been duly appointed and qualified. A Hearing Officer who is in the process of hearing a matter when the Hearing Officer’s term expires, however, shall continue to discharge his or her 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 employing department.

(c) An attorney contracted for an individual matter shall not have a term of office, but shall serve as an independent contractor.

Section 9.  Section 1-31-1130 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1130.  REMOVAL/REVOCATION OF HEARING OFFICER APPOINTMENT:

A Hearing Officer may be removed from serving as a Hearing Officer as follows:

(a) A Hearing Officer may be removed from the position of Hearing Officer by the County at any time for cause.

(b) If a Hearing Officer is disbarred, suspended, or put on involuntary inactive status by the California State Bar, or resigns membership to the State Bar of California, then the Hearing Officer’s appointment is automatically revoked.

(c) If a Hearing Officer is removed, or his or her appointment is automatically revoked while presiding over a matter, then the Clerk shall select a replacement Hearing Officer for the matter in the order specified in section 1-31-1150, except that, if the Hearing Officer is a panel member, and other panel members are available, then the Clerk shall begin by randomly selecting a replacement panel member.

Section 10.  Section 1-31-1150 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1150.  DESIGNATION OF HEARING OFFICER:

(a) Upon receipt of a notice of an appeal that is subject to this Chapter, the Clerk shall assign a hearing officer as follows.

(1) If a County employee is serving as County Hearing Officer, then the Clerk shall assign the employee, and the provisions for reassignment to another Hearing Officer without cause, as specified in this section, shall not apply. However, the provisions for disqualification of a Hearing Officer in § 1-31-1170 shall apply to such assignment.
(2) If there is no County employee in the position of County Hearing Officer, then the Clerk shall designate a member of the Hearing Officer panel appointed hereunder to serve as the County Hearing Officer for the matter. If the panel member designated is unable to serve as the Hearing Officer for the matter, then the Clerk shall designate another panel member to serve as the Hearing Officer for the matter.

(3) If no County employee or panel member is available, then the Clerk shall seek an attorney to serve on an ad hoc basis for the individual matter.

(4) If no County employee, panel member, or ad hoc attorney is available, then the Clerk shall arrange to contract with the Office of Administrative Hearings of the State of California to provide an administrative law judge to serve as the Hearing Officer for the matter.

(b) The Clerk shall promptly notify the parties in writing of the designation of the Hearing Officer for the matter.

(c) If a County employee, individual attorney, or administrative law judge is assigned as the Hearing Officer, the parties may not request reassignment without cause. However, the Hearing Officer shall still be subject to disqualification for cause pursuant to section 1-31-1170.

(d) If the assigned Hearing Officer is a panel member, then within ten (10) days after the date of the notice from the Clerk in subdivision (b) of this section, each party shall be entitled to make a written request to the Clerk for reassignment of the hearing to another panel member. Each party shall be entitled to make only one (1) such request in a given matter. Upon the filing of a request for reassignment in accordance with the provisions of this section, then without any further act or proof, the Clerk shall reassign the matter to the next available panel member in the rotation. Upon reassignment, a new notice of assignment of Hearing Officer shall be served on the parties. A party that did not request reassignment the first time may file its own request for reassignment as described above after the notice of assignment of the second Hearing Officer is served.

Section 11. Section 1-31-1170 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1170. DISQUALIFICATION OF HEARING OFFICER:

(a) A Hearing Officer shall perform his or her duties hereunder impartially, competently, and diligently. A Hearing Officer is subject to disqualification for bias, prejudice, or interest in a proceeding. Any party may raise objections to the Hearing Officer for the record and ask that the Hearing Officer disqualify him- or herself. A Hearing Officer shall voluntarily disqualify him- or herself and withdraw from any case in which there are valid grounds for disqualification. The Hearing Officer shall make the decision to grant or deny the request for disqualification. A denial of such a request may be appealed by any party to the County Administrative Officer, or his or her designee, who shall make a final determination on the request. If a Hearing Officer is disqualified
for any reason, then the Clerk shall select a replacement Hearing Officer for the matter in the order specified in section 1-31-1150.

    (b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the Hearing Officer:

        (1) Is or is not a member of a “class” or group of persons who share the same racial, ethnic, religious, gender, sexual orientation, or similar class or group identity, and the proceeding involves the rights of a specific person who belongs to that class or group.

        (2) 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.

        (3) 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.

**Section 12.** Section 1-31-1180 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

**§ 1-31-1180. GENERAL AUTHORITY OF COUNTY HEARING OFFICER:**

When any provision of this Code, any resolution of the Board of Supervisors, or any policy of a County Department provides that an appeal from an administrative action by a County Officer or Department shall be assigned to a Hearing Officer appointed under this Chapter, 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. The Hearing Officer may, upon the stipulation of all parties, waive or modify any provision of the rules in this Chapter for that type of hearing, completely or in part.

The Hearing Officer’s authority on a particular matter, however, may be limited by the applicable Ordinance Code provision.
Section 13. Section 1-31-1190 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1190. CONDUCT OF HEARINGS:

A Hearing Officer shall conduct and preside over hearings pursuant to the following procedures, unless agreed in writing by the parties to the proceeding or otherwise specified in this Code:

(a) During the hearing, each party may be represented by counsel or another representative of the party’s choice.

(b) 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.

(c) 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.

(d) Oral evidence shall be taken by the Hearing Officer only upon oath or affirmation during the hearing. If the appellant does not testify on his/her own behalf, the appellant may be called and examined as if under cross-examination.

(e) Each party shall have the following rights during a hearing:

(1) To call and examine witnesses;
(2) To introduce exhibits;
(3) To cross-examine opposing witnesses on any matter relevant to the issues whether or not the matter was elicited or discussed during direct examination;
(4) To impeach witnesses, regardless of which party first called them to testify; and
(5) To rebut unfavorable or negative evidence.

(f) The Hearing Officer is authorized to control the scope of evidence and the parties’ means to obtain evidence in a particular hearing. The Hearing Officer may direct any party to produce documentary or other evidence in that party’s control if reasonably necessary to the determination of the matter pending before the Hearing Officer, and may consider any unexplained refusal or failure to produce such evidence in rendering a decision.
(g) 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.

(h) 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 rely 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.

(i) 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.

(j) 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.

(k) 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 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.

(l) 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.

(m) 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 1-31-1170.
(n) 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 thirty (30) 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.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) 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.

(t) Unless otherwise provided in this 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.

Section 14. Section 1-31-1200 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1200. 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.

Section 15. Section 1-31-1260 of Chapter 31 (“Administrative Hearing Procedures and Office of County Hearing Officer”) of Part I (“Government and Administration”) of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1260. OTHER PUBLIC ENTITY’S EMPLOYMENT OF HEARING OFFICER: REIMBURSEMENT TO COUNTY:

(a) Pursuant to Government Code section 27725, any other local public entity may contract with the County to employ the services of a County Hearing Officer. The duties and responsibilities of the Hearing Officer described in Government Code sections 27721 and 27722 shall be set forth in the contract between the County and the other local public entity. Reimbursement to the County
for the services of a County Hearing Officer shall be made as provided in the contract between the County and the other local public entity. If no provision for reimbursement is contained in the contract, then reimbursement shall be made on a pro rata basis of actual cost to the County in providing the service, including salaries, benefits, overhead, and any travel expense.

(b) The County Administrative Officer is authorized to execute such contracts, subject to approval of the form of the contract by County Counsel.

Section 16. Section 1-31-1270 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is amended to read as follows:

§ 1-31-1270. 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.

Section 17. Section 1-31-1280 of Chapter 31 ("Administrative Hearing Procedures and Office of County Hearing Officer") of Part I ("Government and Administration") of the Tulare County Ordinance Code is repealed.

Section 18. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a
summary shall be published once in The Sun Gazette, a newspaper printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 19th day of April, 2022, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE

COUNTY OF TULARE

By: [Signature]
Chair, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Office/ Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Approved as to Form:
County Counsel

By: [Signature]
Deputy

Matter # 20211319

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