



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: September 7, 2004

ITEM NUMBER: VIII – 1 (a)

**SUBJECT:** Prioritization of Programs and Service Efforts – City Council Appeals Process

**DATE:** August 11, 2004

**FROM:** City Clerk's Office, City Manager

**PRESENTATION BY:** Steven E. Hayman, Assistant City Manager

**FOR FURTHER INFORMATION CONTACT:** Julie Folcik, Deputy City Clerk (714) 754-5221

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## **RECOMMENDATION:**

Give direction to staff relative to the appeals process; choose or modify alternatives or continue with current process.

## **BACKGROUND:**

The purpose of Municipal Code Chapter IX of Title 2, Section 2-300 et seq., is to provide for "an orderly and fair method of appeal, rehearing and review of decisions of staff, committees, commissions and council of the city," and the process is detailed within this chapter (Attachment #1).

The City Council at their meeting held June 21, 2004, in a discussion of Programs and Service Efforts, directed that the Appeals process be brought back for further discussion and review. Information was presented at that time that detailed the purpose and cost associated with the appeals process as it relates to those appeals and re-hearings to the City Council level (Attachment #2). Please note that the appeals process as it relates the Development Appeals Process (from a Planner to Zoning Administrator to the Planning Commission) will be addressed at the September 7, 2004 City Council meeting.

## **ANALYSIS:**

The City Council has the discretion to prescribe the "appeals" process. Costs associated for applying for an appeal has fluctuated over the years. Currently the cost to a constituent to appeal a matter to the City Council is \$810.00, as established in Resolution No. 04-7. Those costs are determined by a combination of the direct and indirect costs in the processing of the hearing and the meeting of established notification requirements. The costs for an appeal have varied over the years.

However, an individual Council member can intervene on behalf of an affected person and file a “review” of the decision pursuant to Section 2-302. This “review” is in effect the same as an appeal, except there is no fee to file a review. It is however, at the discretion of the individual Council Member to determine if they will oblige, and file the “review” application for the individual who wants a particular decision appealed.

In the past fiscal year (FY2003-2004) the City Council held 37 hearings and of those there were five (5) appeals to the City Council and one rehearing. Of the appeals filed three (3) were technically “reviews” filed by City Council Members and therefore the fees waived. The previous fiscal year (FY 2002-2003) 46 hearings were held by the City Council of which there were 15 appeals, and three (3) rehearings. Of the number of appeals and re-hearings held, the fees had been waived, by the process of “review”, in 14 of those instances.

As previously mentioned the fees for an appeal are currently \$810.00, however in the preceding fiscal years the costs have fluctuated. As required in Resolution No. 02-51, the cost for an appeal or rehearing was \$248.00 for a resident and \$610.00 for a non-resident, reflecting a partial subsidizing by the City for that of an appeal by a constituent. A prior fee for an appeal was established by Resolution No. 00-6 and the cost for an appeal/rehearing was \$430.00 for both a resident and non-resident. In the two prior fiscal years the appeals process (based on the required fees only) has cost constituents and the City a combined estimated amount of \$7440.00.

### **ALTERNATIVES CONSIDERED:**

Alternatives that may be suggested regarding an amendment of the appeals process could be:

1. To eliminate the fee waiver provided through the “review” process, whereby a constituent may request a “review” of a decision through a Council Member.
2. To reduce the cost of appeals and the City to partially subsidize a percentage of the fees.
3. A combination of the elimination of the waiving of fees through the “review” process and a slight reduction in the fees for the appeals.
4. Another alternative suggested was to require more than one council member to appeal a decision, to ensure more council consensus in relation to the appeal. This requirement may be applied to all City Council “reviews” or made to apply to only specific types of Planning Commission determinations. (Please see Attachment #3 regarding a recent article in the Daily Pilot discussing this type of suggestion.)

**FISCAL REVIEW:**

Financial Management has reviewed the information for accuracy.

**LEGAL REVIEW:**

Legal has reviewed the accuracy of the information provided.

**CONCLUSION:**

The appeals process offers the constituents a method by which to obtain a second decision on controversial matters. The fees associated with the process are established based on the indirect and direct costs to the City in the preparation of the appeals hearing; costs that are borne by the City with the waiving of fees through the “review” process. The request for review of the appeals process has provided staff the opportunity to review alternatives with the reduction of the City’s costs as the focus. It is requested that Council consider the information provided and direct staff as to desired modification to the appeals structure/process or to continue with the current practice as prescribed.

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JULIE FOLICK  
Deputy City Clerk

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ALLAN ROEDER  
City Manager

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MARC R. PUCKETT  
Director of Finance

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TOM WOOD  
Acting City Attorney

DISTRIBUTION: City Council  
City Manager  
Assistant City Manager  
City Attorney

- ATTACHMENT:
1. [Costa Mesa Municipal Code Chapter IX – Appeal, Rehearing and Review Procedure](#)
  2. [Priorities and Service Priorities discussion item](#)
  3. [Daily Pilot - “Newport to review decision process”](#)
  4. [Supplemental Report dated August 12, 2004](#)

Appeals Process

August 31, 2004

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