



CITY OF COSTA MESA
P. O. Box 1200
Costa Mesa, CA 92628-1200

FEE: \$ _____

APPLICATION FOR REVIEW, APPEAL OR REHEARING

Applicant Name Sandra Genis

Address 1586 Myrtlewood, Costa Mesa, CA

Phone 714-754-0814 Representing* Myself in my capacity as a Council Member representing the general public

REQUEST FOR: REVIEW** APPEAL REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) January 15, 2013 City Council New Business Item No. NB-1, Appointments to the Planning Commission and the Parks and Recreation Commission. Consistent with Municipal Code Section 2-304 I am requesting a de novo hearing on New Business Item No. NB-1.

Decision by: City Council

Reasons for requesting review, appeal or rehearing: See Attached

Date: 02 Jan 2013 Signature:

For office use only — do not write below this line

SCHEDULED FOR THE CITY COUNCIL PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.

CITY COUNCIL ACTION

The January 15, 2013 Costa Mesa City Council agenda included an item regarding appointments to City Commissions, listed as follows on the posted agenda:

NEW BUSINESS

1. APPOINTMENTS TO THE PLANNING COMMISSION AND THE PARKS AND RECREATION COMMISSION

RECOMMENDATION:

Staff recommends that the City Council:

1. Make appointments to fill **two** [emphasis added] vacancies on the Planning Commission; and
2. Make appointments to fill four vacancies on the Parks and Recreation Commission.

The City had advertised openings for two, four-year positions and the staff report stated:

Staff received thirteen applications (attached) for the **two** [emphasis added] vacancies on the Planning Commission. The term for the two newly appointed Commissioners will be February 2013 through February 2017.

On Monday evening, apparently a third planning commissioner resigned, creating a third opening for a partial term, which would expire in 2015. On Tuesday evening it was suggested that the City Council appoint a third individual someone to serve out the remainder of that term as well.

In response to a question as to whether the third appointment would be outside the scope of the posted agenda, the City Attorney indicated that the third appointment would be within the scope of the agenda, despite the recommendation to appoint only two. The recommendation was not treated as part and parcel of the itemized agenda and not a limitation upon the action of the City Council. The City Council also waived adopted City Council Policy 000-2.5, which specified that the City cause public notice to be given of the number and type of appointments to be made inasmuch as the third opening had not been advertised to the general public. The City Council then selected two commissioners for four-year terms and one commissioner for the two-year balance of the vacated term.

The City Council then proceeded to the next item, agendized as follows:

2. RENAMING OF INVESTMENT OVERSIGHT COMMITTEE TO FINANCE ADVISORY COMMITTEE

RECOMMENDATION:

City Council consider renaming the Investment Oversight Committee to the Finance Advisory Committee and expanding the current purpose of the committee.

In response to a question as to whether the change in committee duties would be outside the scope of the posted agenda which listed the item merely as a name change, the City Attorney indicated that the action to change committee responsibilities would be within the scope of the agenda. Thus, the recommendation was to be treated as part and parcel of the itemized agenda, i.e. an integral part of the itemized agenda.

REASONS FOR REHEARING

1. The City failed to fulfill to fulfill the requirements of Government Code Section 54974.

Government Code Section 54974 (a) requires that:

Whenever an unscheduled vacancy occurs in any board, commission, or committee for which the legislative body has the appointing power, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the office of the clerk of the local agency, the library designated pursuant to Section 54973, and in other places as directed by the legislative body, not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final appointment to the board, commission, or committee shall not be made by the legislative body for at least 10 working days after the posting of the notice in the clerk's office.

The only exception would be in an emergency existed pursuant to Section 54974 (b). Clearly the required notice could not have been posted in compliance with Section 54974, because the opening had only become available the previous evening.

It is imperative the City adhere to both the letter and the intent of the statute which includes the following:

- (b) The Legislature further finds and declares that the general public of this state has traditionally been denied access to information regarding vacancies which occur on such boards, commissions, and committees...
- (c) The Legislature further finds and declares that the respective local appointive powers have been denied access to a talent resource hitherto untapped.

(d) The Legislature further finds and declares that all citizens of the state, regardless of their place of residence should have equal access to specific and current information about the many local regulating and advisory boards, commissions, and committees and equal opportunity to be informed of vacancies which shall occur thereon ...

Thus, the statute is designed to not only ensure full participation, but full and equal disclosure. In this case, not even all Council Members, such as myself, were aware prior to the meeting that a third appointment would be considered.

It may be noted that as stipulated in Section 54970 (e), the requirement applies to both charter and general law cities.

2. The City failed to fulfill to fulfill the requirements of Government Code Section 54950 et seq (Brown Act).

In accordance with Government Code Section 54954.2. (a):

(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session...

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or question posed by persons exercising their public testimony rights ...

The agenda clearly stated that two planning commission appointments would be made, not three. As noted above, I as a Council Member was not aware in advance that a third appointment would be considered. How then would the general public have known?

It is unsettling that the "recommendation" portion of the posted agenda would be considered an integral part of the agenda information for purposes of New Business Item 2, but not for New Business Item 1. In addition, neither the agenda nor recommendation nor any staff report suggested that the City Council waive any of its adopted policies and the public thus had no opportunity to consider the implications or precedent resulting from the action or to comment thereon.

I believe the Council erred in addressing the third appointment and believe further that the only reasonable remedy is a de novo hearing of New Business Item NB-1.

ATTACHED IS THE ORIGINAL STAFF
REPORT FROM THE JANUARY 15, 2013
MEETING.

IF THE REHEARING IS APPROVED, THIS
ITEM WILL BE ON THE FEBRUARY 19, 2013
MEETING (APPOINTMENT OF PLANNING
COMMISSIONERS ONLY).



CITY COUNCIL AGENDA REPORT

MEETING DATE: January 15, 2013

ITEM NUMBER:

NB-1

SUBJECT: APPOINTMENTS TO THE PLANNING COMMISSION AND THE PARKS AND RECREATION COMMISSION

DATE: January 10, 2013

FROM: CHIEF EXECUTIVE OFFICERS OFFICE

PRESENTATION BY: BRENDA GREEN, INTERIM CITY CLERK

FOR FURTHER INFORMATION CONTACT: Brenda Green, Interim City Clerk, (714) 754-5221

RECOMMENDATION:

Staff recommends that the City Council:

1. Make appointments to fill two vacancies on the Planning Commission; and
2. Make appointments to fill four vacancies on the Parks and Recreation Commission.

BACKGROUND:

The Planning Commission consists of five appointed positions which serve staggered four-year terms. The appointed terms of Commissioner McCarthy and Commissioner Clark expire February 1, 2013. Staff received thirteen applications (attached) for the two vacancies on the Planning Commission. The term for the two newly appointed Commissioners will be February 2013 through February 2017.

The Parks and Recreation Commission consists of five appointed positions which serve staggered four-year terms. The appointed term of Commissioner Pederson expires February 1, 2013. There are three additional vacancies due to resignations. Staff received eleven applications (attached) for the four vacancies on the Parks and Recreation Commission. The term for two newly appointed commissioners will be February 2013 through February 2017. The term for two newly appointed commissioners will be February 2013 through February 2015.

Appointed commissioners must be registered voters in the City. Staff has confirmed that all applicants are registered voters in the City.

ANALYSIS:

A total of twenty-four applicants have submitted applications for appointment to the Commissions in response to the City's December 10th and December 12th press releases. The following lists the applicants for the Planning Commission and Parks and Recreation Commission.

Planning Commission

2 Appointments

1. Byron De Arakal*
2. Samuel Clark
3. Eleanor Egan
4. Jim Fitzpatrick
5. Daniel Hoffman
6. Marshall Krupp
7. Sue Lester
8. Devin Lucas*
9. Colin McCarthy
10. Timothy Sesler*
11. Steve Smith
12. Harold Weitzberg
13. Jonathan Zich

Parks and Recreation Commission

4 Appointments

1. Mark De Antonio
2. Byron De Arakal*
3. Daniel Debassio III
4. Christopher Ganiere
5. Robert Graham
6. Devin Lucas*
7. Al Melone
8. Kim Pederson
9. Timothy Sesler*
10. Roshele Snyder
11. Micheal Thies

*Applied for both Commissions.

APPOINTMENT PROCESS:

1. The City Clerk announces the time and place for appointment of commissioners and reads the names of all applicants into the record.
2. The Mayor opens the floor for public comments.
3. Following public comments, members of the City Council may provide comments on applicants, qualifications and related matters.
4. Council members draw numbers to determine order of nominations.
5. The first Council member in order nominates his or her preferred applicant. The nomination must receive a second to be voted upon. Upon receiving a second to the nomination, the Mayor calls for the vote. In the event a nomination does not receive a second, the right to nominate moves to the next Council member in order of the draw.
6. The process of nominations and seconds continues until commission vacancies are filled.

ALTERNATIVES CONSIDERED:

None.

FISCAL REVIEW:

Planning Commissioners receive \$400.00 monthly and Parks and Recreation Commissioners receive \$100.00 monthly.

LEGAL REVIEW:

No legal review is required for this item.

CONCLUSION:

Staff has provided this report identifying the applicants who wish to serve on the Planning Commission and/or the Parks and Recreation Commission, and summarizing the Commission appointment process. At this time, City Council is requested to make appointments on both the City's Planning Commission and Parks and Recreation Commission.



BRENDA GREEN
Interim City Clerk



RICK FRANCIS
Assistant Chief Executive Officer

- ATTACHMENTS:**
- 1 Applications for the Planning Commission
 - 2 Applications for the Parks and Recreation Commission
 - 3 Council Policy 000-2.5